

**EXHIBIT A (Part II)**

Page 157

1 Carley Jespersen announcing her decision to resign  
2 from the company and to seek opportunities elsewhere.  
3 A. I see that.  
4 Q. Did you personally talk to Carley Jespersen  
5 about her decision to resign?  
6 A. The morning of the 20th, I believe I did. I  
7 don't recall my schedule exactly on the 19th, but I  
8 have a recollection that I might have been at Hershey  
9 Medical Center that day, which would have taken me  
10 away from my home office. Therefore, I would not have  
11 had access to E-mail. Unless someone tracked me down  
12 and told me this was occurring, I have no way of  
13 knowing it. I have a notion of remembering that I was  
14 in transit either to or from Hershey Medical Center.  
15 It's possible on the 19th I did speak with her by cell  
16 phone, but I don't have a specific recollection of the  
17 conversation. Does that answer your question? I lost  
18 track of what you're asking me.  
19 Q. Do you recall having any conversations with  
20 Carley Jespersen about her decision to resign?  
21 A. On the 20th, I do not. I do not have a  
22 specific recollection prior to that, although it's  
23 possible I may have spoken to her.  
24 Q. Did you call her on the 20th, or did she

Page 158

1 call you?  
2 A. My recollection is I called her.  
3 Q. What do you recall about your discussion  
4 with her?  
5 A. She was upset. Based on what I'm reading  
6 here now, it comes back a little clearer to me; that  
7 she sounded like she had been crying. She was  
8 obviously upset to me over the telephone. I asked her  
9 why. She told me about her notice and she was leaving  
10 Harleysville and she wasn't getting the support she  
11 needed. It was an untenable situation. She felt like  
12 she was being forced out.  
13 Q. So your testimony is you spoke to her on the  
14 20th?  
15 A. That's what I recall.  
16 Q. And what you just described was the  
17 conversation you had with her on the 20th after she  
18 had handed in her notice?  
19 A. The first recollection I have of her notice  
20 of resignation was that morning of the 20th. That's  
21 what I remember.  
22 Q. If you take a minute to look at this E-mail,  
23 it cannot possibly be correct; can it, your  
24 testimony?

Page 159

1 A. Why is that?  
2 Q. Because in this E-mail, which refers to the  
3 conversation you've just described as having occurred  
4 on the 20th, it says "I called Carley early  
5 yesterday", which would have been the 19th, "to follow  
6 up on the Langer invoices, and it sounded as though  
7 she had been crying. When I asked if anything was  
8 wrong, she said that she was giving her notice of  
9 resignation." Do you see that?  
10 A. I stand corrected. You're absolutely  
11 right. My recollection is incorrect.  
12 Q. You spoke to her on the 19th. She told you  
13 that she was going to resign.  
14 A. I'm sorry. I don't have a specific  
15 recollection of the time line, but that's what it  
16 says.  
17 Q. What she told you was that she feels  
18 overwhelmed, and that no matter what she does, it's  
19 not the right thing; right?  
20 A. I remember that, yes.  
21 Q. You got the impression that she felt  
22 stressed out?  
23 A. Yes.  
24 Q. That was the sum and substance of what she

Page 160

1 told you that's reflected here?  
2 A. That's not everything we talked about. This  
3 is a summary of my recollection of the conversation  
4 for what I felt was pertinent to share with Mr.  
5 Weinstein.  
6 Q. Other than what's reflected in this  
7 document, what did she tell you happened on the 19th?  
8 A. I remember some discussion about Mennonites,  
9 and not specifically in any context that I can  
10 recall. Apparently, the organization had a Mennonite  
11 background, which means nothing in the context of this  
12 conversation to me, but apparently meant something to  
13 her. She just didn't feel it was a tenable situation  
14 for her to remain in.  
15 Q. She was having trouble coping with work;  
16 right?  
17 A. Apparently.  
18 Q. You had previously referred to her as an  
19 inexperienced administrative assistant?  
20 A. I did.  
21 Q. And Mr. Campbell had another job to do,  
22 other than the job that you were supposed to of  
23 managing her and training her; right?  
24 A. That's my understanding.

Page 161

1 Q. So this was a decision that she made based  
2 on the circumstances? It was her own decision;  
3 correct?  
4 A. I don't know what drove her to make that  
5 decision.  
6 Q. You simply don't know; right?  
7 A. Other than what she relayed to me; that she  
8 felt stressed out and overwhelmed, and she wasn't  
9 getting the support from the co-workers and home  
10 office around her.  
11 Q. Was some of that directed to you in terms of  
12 lack of support?  
13 A. I didn't get that impression.  
14 Q. You tried to persuade her to stay; right?  
15 A. Yes. In fact, I asked if there was anything  
16 that we could do to make her change her mind, and she  
17 said, no.  
18 Q. So she knew that she wasn't being  
19 terminated; that she could stay if she wanted to?  
20 A. You'd have to ask her that question.  
21 Q. You don't know?  
22 A. I don't know.  
23 Q. You personally have no facts to suggest that  
24 she was constructively discharged; do you?

Page 162

1 A. Other than the fact that she relayed to me  
2 about her concern with the organization and the  
3 interface and lack of support from those people in the  
4 home office, no.  
5 Q. Do you know what the term constructively  
6 discharged even means?  
7 A. I know what it means to me.  
8 Q. What does it mean to you?  
9 A. What it means to me is that the atmosphere  
10 has become so difficult, a person in that circumstance  
11 would be treated as though they're no longer valued  
12 and their services are not needed, yet, they haven't  
13 been given formal notice.  
14 Q. I'm going to show you a document we've  
15 marked for identification. I've put before you a  
16 document we marked as Vail deposition 21. It's dated  
17 July 26th from Gary Weinstein to you. It's again  
18 stating his concerns about priorities. Do you recall  
19 receiving this E-mail?  
20 A. I do.  
21 Q. In the third paragraph, he says, "We are  
22 very, very long overdue on providing report review  
23 feedback to all of your staff members." Do you see  
24 that?

Page 163

1 A. I see that.  
 2 Q. You don't have any reason to dispute that as  
 3 of that time; do you?  
 4 A. No. All the evidence is resident on the  
 5 computer that I no longer have.  
 6 Q. As of July 20th, he had undertaken that you  
 7 were going to take care of it and get things back on  
 8 track; right?  
 9 A. I'm sorry.  
 10 Q. As of July 20th in your response to Mr.  
 11 Weinstein's E-mail, which you agreed was putting you  
 12 on notice of his dissatisfaction, you had undertaken  
 13 to take care of the staff reviews?  
 14 A. Not in the six-day period.  
 15 Q. You had undertaken to get things back on  
 16 track?  
 17 A. Correct, but I didn't warrant that it would  
 18 be at a specific point in time.  
 19 Q. He notes at this time, despite his repeated  
 20 efforts to get you to do this, that you have not even  
 21 completed five report reviews for half of your staff  
 22 members during your entire term with Harleysville. Do  
 23 you see that? "You have repeatedly committed to  
 24 completing these on an ongoing basis and not even

Page 164

1 completed five report reviews for half of your staff  
 2 members during your entire term with Harleysville.  
 3 Please, quickly increase the pace of report reviews.  
 4 Your staff deserves your feedback." Do you see that?  
 5 A. I do.  
 6 Q. You have no facts to dispute that that's  
 7 what you were saying?  
 8 A. It looks to me that on half of them, I did,  
 9 and then he's saying on some of them, I didn't.  
 10 Q. But that's over the entire period that you  
 11 had been working there.  
 12 A. The entire period wasn't that long a period  
 13 of time.  
 14 Q. And yet, this is the staff that you said  
 15 earlier needed some close management direction.  
 16 A. Some of which did. Some of which didn't.  
 17 Q. A couple, you said, didn't.  
 18 A. Correct.  
 19 Q. I'm going to show you a document we'll mark  
 20 as Vail deposition 22.  
 21 (Whereupon exhibit Vail-22 was marked  
 22 for identification.)  
 23 BY MR. HALLER:  
 24 Q. Before I go to Vail deposition 22, I have

Page 165

1 one more question on the previous exhibit, 21. Did  
 2 you recognize the fact that Mr. Weinstein had to send  
 3 you yet another E-mail asking you to complete the  
 4 staff reviews was not a good sign from a perspective  
 5 of his evaluation of your performance?  
 6 A. I don't recall receiving a performance  
 7 evaluation.  
 8 Q. That wasn't my question though.  
 9 A. Would you, please, restate your question.  
 10 Q. You had received an E-mail a few days  
 11 earlier that you admitted in this deposition was an  
 12 indication of his serious concerns over your  
 13 performance. Now he writes another E-mail to you  
 14 saying that you haven't met his expectations as to the  
 15 priorities that he set. My question to you is: Did  
 16 you understand that that did not go well for his  
 17 assessment of your performance?  
 18 A. In a certain sense, he reversed his  
 19 priorities. In his prior message on the 20th, he  
 20 asked me to focus on the quality assurance work. On  
 21 the 26th, he reverses course and asks me to focus on  
 22 management assessment and employee hiring practices  
 23 training seminar that's scheduled for August. Then  
 24 six days later is not, in my view, an appropriate

Page 166

1 expectation to have of a person who doesn't have  
 2 access to the information to have all that work  
 3 completed. If you're asking me is this a follow-up  
 4 with a twist to the previous message on the 20th, it  
 5 is. Is it a reasonable expectation to have that work  
 6 completed in six days? No, it's not, in my view.  
 7 Q. Do you agree that the fact that Mr.  
 8 Weinstein had to do a follow-up memo was a bad thing  
 9 from your perspective?  
 10 A. I don't look at it as positive. The fact  
 11 that Mr. Weinstein chose to send that message was his  
 12 prerogative.  
 13 Q. Given that you are an experienced manager,  
 14 do you not recognize the problem that is reflected by  
 15 Mr. Weinstein's need to constantly remind you about  
 16 the same things over a period of time beginning in May  
 17 and continuing until, at least, July 26th?  
 18 MS. HUTNIK: I'm going to object to the  
 19 form of the question.  
 20 You can answer.  
 21 THE WITNESS: As an experienced manager  
 22 in a different culture, this is counter-cultural to  
 23 what my expectations would have been. Also, contrary  
 24 to experience I had in the training session that was

Page 167

1 in May before my injury, I found it so difficult to  
 2 comprehend that Harleysville would portray a  
 3 progressively disciplinary policy with five steps, and  
 4 then totally disregard it. To answer your question,  
 5 yes, as an experienced manager, I was baffled by this  
 6 type of communication.  
 7 BY MR. HALLER:  
 8 Q. Mr. Vail, if you have an employee and you  
 9 have to constantly say to an employee I need you to do  
 10 this and those things do not get done and you have to  
 11 keep reminding them, that's not a good situation; is  
 12 it? Can we agree on that?  
 13 A. In general, yes. With regard to this  
 14 particular circumstance, that kind of expectation, in  
 15 my view, is unreasonable.  
 16 Q. Is it your position that if Mr. Weinstein  
 17 put you on a performance improvement plan that would  
 18 have been a better way to improve the situation?  
 19 A. It would have been more understandable. May  
 20 I add to my answer?  
 21 Q. No, not unless it's responsive.  
 22 A. It is responsive.  
 23 Q. If you didn't finish your response, you can  
 24 continue. I don't want to interrupt your response.

Page 168

1 A. There we go with the word simply again. I  
 2 didn't mean to interject that. If Mr. Weinstein was  
 3 intending to portray this as a huge performance issue  
 4 that impacted my future employment with this  
 5 organization at some period in time, then I would have  
 6 understood, had he phrased it in the form of a  
 7 performance improvement plan, which he clearly didn't  
 8 do.  
 9 Q. What I'm asking you is: As an experienced  
 10 manager seeing these E-mails come flying by you time  
 11 after time again, you must have realized that from his  
 12 perspective, he viewed that there was a serious  
 13 performance problem, whether or not he used  
 14 performance improvement language. Don't you agree  
 15 with that?  
 16 A. I agree that we differed over how to achieve  
 17 objectives and results. I don't agree with the  
 18 premise as you present it to me.  
 19 Q. There is no requirement under Harleysville's  
 20 policies that anyone be put on a performance  
 21 improvement plan; is there?  
 22 A. That's not my understanding.  
 23 Q. Where does your understanding come from?  
 24 A. It was actually drilled into me in the

Page 169

1 supervisor's orientation session that Harleysville  
 2 prides itself in having a progressive disciplinary  
 3 policy which includes five steps. I can't articulate  
 4 from memory what they were, but if we go back to the  
 5 book, I'm sure we can find it.  
 6 Q. Why don't we go back to exhibit number 11,  
 7 which is the very thick document? If you want to go  
 8 towards the back of the document six pages from the  
 9 back --  
 10 A. What page are you on?  
 11 Q. Page three at the top. There's progressive  
 12 performance improvement procedures. Do you see that?  
 13 A. Yes, I do.  
 14 Q. You yourself have no knowledge as to exactly  
 15 how Harleysville had put into practice these  
 16 procedures prior to March 27th, 2000; have you?  
 17 A. No, I have no way to know that.  
 18 Q. And you yourself were not directly involved  
 19 in putting anyone on performance improvement between  
 20 March 27th, 2000 and September 6th, 2000; were you?  
 21 A. That's correct.  
 22 Q. So you yourself have no direct knowledge or  
 23 experience with the practice and procedure under this  
 24 policy; do you?

Page 170

1 A. Just what I was taught at the supervisor's  
 2 orientation session, which is a separate document from  
 3 this one.  
 4 Q. Do you still have a copy of that?  
 5 A. My counsel has a copy.  
 6 Q. Do you know whether that was provided to the  
 7 defendant in this case?  
 8 A. I know it was made available on the request  
 9 for production. I gave it to my attorney. What form  
 10 it may have been shared, I don't know.  
 11 Q. You do see at the bottom of the page that it  
 12 says specifically the company reserves the right to  
 13 terminate employment at will with or without reason at  
 14 any time?  
 15 A. I see that it says that.  
 16 Q. And it says, depending on the circumstances,  
 17 the company may, however, try to correct the problem  
 18 first.  
 19 A. I see that it says that.  
 20 Q. So there's no requirement that there be any  
 21 kind of progressive discipline in the policy; is  
 22 there?  
 23 A. Not in this document.  
 24 Q. Are you aware of any document in which there

Page 171

1 is a requirement with respect to progressive  
 2 discipline?  
 3 A. Well, I took some notes at the supervisor's  
 4 orientation meeting, but I don't remember what they  
 5 said.  
 6 Q. Do you understand that the procedures that  
 7 may be used for a long-term employee might be  
 8 different from those that might be used in the context  
 9 of somebody who had only been with the company a  
 10 relatively short amount of time?  
 11 A. I would not have a philosophical  
 12 distinction, if you will, that an organization may  
 13 choose to do that.  
 14 Q. In fact, you are aware that generally that  
 15 most companies reserve the right to terminate anybody  
 16 during an introductory period of six months without  
 17 any kind of performance analysis?  
 18 A. I don't know what most companies do. I know  
 19 that it's not unheard of for organizations to have a  
 20 probationary period. I know you have broad latitude  
 21 to ask questions in this setting that may not exist at  
 22 trial, but I don't understand the relevance of the  
 23 question. Maybe you can help me with that.  
 24 Q. I've put before you a document marked Vail

Page 172

1 deposition 22. Do you have that document in front of  
 2 you?  
 3 A. Yes.  
 4 Q. These are two E-mails, one dated July 20th,  
 5 2000 from Mr. Gary Weinstein to you, and then a  
 6 response from you to him, and then a short response  
 7 from him to you, again, all on the 20th. Do you see  
 8 that?  
 9 A. I do.  
 10 Q. This exchange starts with Mr. Weinstein  
 11 saying he was confused by your recollection of the  
 12 discussion of part-time status. Do you generally  
 13 recall that there was some confusion over apparently  
 14 what you said?  
 15 A. That's what he said.  
 16 Q. In his E-mail, he specifically asked you in  
 17 a direct question whether you can work full time at  
 18 that point in time with obviously accommodation to  
 19 take breaks and have a modified schedule. Do you see  
 20 that?  
 21 A. I do.  
 22 Q. Your response was, "Yes, I can, with those  
 23 accommodations;" right?  
 24 A. Those weren't my exact words, but to that

Page 173

1 effect.  
 2 Q. Your statement was, "Gary, I can do  
 3 full-time work with accommodation/restriction by  
 4 continuing to spread out my workday." That was your  
 5 response; right?  
 6 A. That's what it says, yes.  
 7 Q. So as of July 20th, there was no longer any  
 8 lingering issue as to whether there should be some  
 9 further reduction in your schedule. You were fully  
 10 committed to working on a full-time basis?  
 11 A. That was the plan.  
 12 Q. When did you return to work from the home  
 13 office?  
 14 A. To the Harleysville home office?  
 15 Q. Yes.  
 16 A. That was on or about August 21st, if I  
 17 recall correctly.  
 18 Q. In conjunction with your return to work, did  
 19 you provide any medical documentation?  
 20 A. My physician gave me two separate notes to  
 21 return to work. The first one that was handed to me  
 22 didn't have the lifting restrictions on it that we had  
 23 discussed, and I challenged the nurse practitioner  
 24 with that. She said, "Oh, you're right. Don't

Page 174

1 worry. I'll take care of it." I had two separate  
 2 versions of that return-to-work sign-off for the  
 3 position, if you will. I remember, upon my return to  
 4 Harleysville, that one of the people asked me, and I  
 5 can't recall specifically who it was. I think I have  
 6 an E-mail document that memorializes that exchange.  
 7 But asked me for a return-to-work document because if  
 8 I couldn't provide it, I would have to leave  
 9 immediately and go home. I rooted around in my bag  
 10 and pulled out what I had in my possession, which was  
 11 the first of the two notices, and I had to get  
 12 somewhere for work. It was some meeting or  
 13 something. I don't specifically remember what. I  
 14 remember this is odd I can't find the other one. I  
 15 gave it to the HR person or whoever that person was so  
 16 I wouldn't have to leave the office that day and root  
 17 around for it and find it later. There are two  
 18 versions of that. I've not been able to find the  
 19 other one yet. I'm still searching for it. I'll make  
 20 it available to counsel.  
 21 Q. I'd like to show you a document we'll mark  
 22 as 23.  
 23 (Whereupon exhibit Vail-23 was marked  
 24 for identification.)



Page 175

1 BY MR. HALLER:  
 2 Q. I've put before you a document I've marked  
 3 as exhibit-23. I'd ask you if that is the doctor's  
 4 note you just testified about that you gave to  
 5 Harleysville.  
 6 A. It is.  
 7 Q. You would agree that this reflects no  
 8 restrictions?  
 9 A. The restrictions that were discussed with  
 10 the physician are not noted on this form.  
 11 Q. Let me show you a document that we'll mark  
 12 as 24.  
 13 (Whereupon exhibit Vail-24 was marked  
 14 for identification.)  
 15 THE WITNESS: This is it.  
 16 BY MR. HALLER:  
 17 Q. So there's a subsequent doctor's note dated  
 18 the 9th of August which says that you can return to  
 19 work, but with a lifting restriction of 30 pounds and  
 20 above until further notice?  
 21 A. Although these documents have different  
 22 dates on them, they were given to me at the same  
 23 time.  
 24 Q. So this is the second note that you were

Page 176

1 referring to earlier in your testimony?  
 2 A. That's correct.  
 3 Q. So from Harleysville's perspective, you were  
 4 cleared in full to return to work, other than a  
 5 limitation on lifting 30 pounds or more?  
 6 A. I don't know from Harleysville's perspective  
 7 what they knew. I thought through conversation that  
 8 it had been made clear, and through visual observation  
 9 of me, it was obvious that I had difficulty  
 10 ambulating. So when we say fully cleared to work  
 11 except for lifting 30 pounds, from my perspective,  
 12 that would be an inaccurate assessment or certainly  
 13 incomplete.  
 14 Q. Are you saying this doctor's note, even  
 15 though you went back to them, is incomplete?  
 16 A. Dr. Reid was not known for his thoroughness  
 17 of documentation, although he's a very talented  
 18 surgeon.  
 19 Q. I'm going to show you another document we'll  
 20 mark as 25.  
 21 (Whereupon exhibit Vail-25 was marked  
 22 for identification.)  
 23 BY MR. HALLER:  
 24 Q. Have you ever seen this document before?

Page 177

1 A. Not that I can recall.  
 2 Q. This appears to be a supplementary  
 3 disability record dated the 6th of September completed  
 4 by Dr. Spence Reid; is that correct?  
 5 A. I'm looking for the date.  
 6 Q. Top left hand.  
 7 A. 9-6-2000 is what it says.  
 8 Q. In terms of any restrictions, it's no  
 9 lifting more than 25 pounds, no standing for more than  
 10 two hours a day and no walking for more than 30  
 11 minutes at a time. Is that an accurate reflection of  
 12 your understanding as to the limitations you had at  
 13 that point as of September 6th?  
 14 A. This is the first I've seen this document.  
 15 It sounds reasonable to me as it's presented.  
 16 Q. As of September 6th, 2000, could you  
 17 describe to me what your daily routine was?  
 18 A. September 6th, 2000, I don't know that I  
 19 still had a daily routine at that point. September  
 20 6th, my recollection was I was driving to the --  
 21 Q. I'm not asking you what you did on September  
 22 6th. I'm just trying to make a time frame. In early  
 23 September of 2000, describe to me just how you would  
 24 operate on a daily basis. You would get up in the

Page 178

1 morning and brush your teeth, and then I don't know.  
 2 I just want to know how you were doing on a daily  
 3 basis.  
 4 A. You want that level of detail?  
 5 Q. Yes.  
 6 A. The alarm clock would go off. I would get  
 7 up, and I would get ready for work, and I would get my  
 8 materials ready for the day. As of September 6th, I  
 9 may have had a crutch or a cane. I don't recall  
 10 specifically. I believe on the 6th, it might have  
 11 been a cane. I would either go to the Harleysville  
 12 office to process work, or in the case of actually  
 13 what occurred on September 6th, I would go off to a  
 14 field appointment, in which case, I did so to go to  
 15 the Harrisburg branch office called the Susquehanna  
 16 branch.  
 17 Q. You were able to drive on your own?  
 18 A. It was painful, but I could do it. I was  
 19 able to put either the crutch or the cane next to me  
 20 and drive down the road carefully. My intention that  
 21 day was to continue on to meet with Robert Panlayo for  
 22 a field survey, and my recollection is that prior to  
 23 arriving at the Susquehanna branch office in the  
 24 Harrisburg area, en route, I had received a phone call

Page 179

1 from Gary Weinstein asking where I was going and why  
 2 he didn't know about it.  
 3 Q. I'm really trying to stay away from the  
 4 specific events of the day at work. I'm just trying  
 5 to find out what your daily routine was.  
 6 A. I don't know at that point there was a  
 7 routine. I had gone into the office. I tried to make  
 8 sense out of where my possessions were and put them in  
 9 place. There were numerous boxes that were in a  
 10 common area in the office that Gary Weinstein asked me  
 11 to lift and put away. I said, "Gary, that's not  
 12 possible, given my current condition, with this  
 13 weight." Then he said it could wait. I was being  
 14 pressured to move boxes, trying to get the computer  
 15 system working appropriately. It had numerous  
 16 glitches upon my return to the office in getting the  
 17 focus system to print. I got those challenges out of  
 18 the way. There was a new administrative assistant  
 19 named Debbie, who was not my assistant, but a  
 20 departmental assistant. Craig Campbell arranged  
 21 appointments with vendors without my knowledge. They  
 22 were showing up, and there were meetings, and I got  
 23 called into meetings on the fly. When I say fly, I  
 24 don't mean with pointed speed, but without planning.

Page 180

1 When you asked me what the routine was, at that point  
 2 after the seminar in Harrisburg which took place on or  
 3 about a period of time from the 28th to on or about  
 4 the 31st, and I don't recall specifically, there was a  
 5 day that I had off in September that I remember going  
 6 on my crutches to spend one of the last days of the  
 7 summer at the shore, since I entirely missed the  
 8 family vacation that had been scheduled due to my  
 9 injury. I couldn't swim and didn't go near the  
 10 water. I sat on a bench and looked out over the  
 11 ocean, and for that moment, life was pleasurable. The  
 12 next day, I returned to work and treated rather coldly  
 13 by Gary Weinstein. There was no routine.  
 14 Q. That may be the answer. I'm not asking you  
 15 currently specific events. I'm trying to find out how  
 16 you were living your life during that time frame, and  
 17 I'm hearing you say you were able to get up in the  
 18 morning, brush your teeth, get breakfast, do normal  
 19 things; right?  
 20 A. With difficulty ambulating.  
 21 Q. So that the limitation that you had was with  
 22 respect to some limitations on your ability to walk?  
 23 A. I would say serious limitations on my  
 24 ability to walk; i.e., I couldn't walk without a

Page 181

1 device.  
 2 Q. When you say device, you're talking about a  
 3 cane at this point in time, right?  
 4 A. A crutch or a cane occasionally. In early  
 5 September, which is the period you queried me about, I  
 6 was using them both.  
 7 Q. And then, as I understand it, the prognosis  
 8 was that you would be able to walk without a cane in a  
 9 relatively short amount of time.  
 10 A. I don't have that level of understanding.  
 11 Q. By November of 2000, you were able to walk  
 12 without a cane based on your exercise regimen?  
 13 A. I would say in the latter part of the year,  
 14 and I won't warrant November of 2000, but in December,  
 15 I could take short steps for periods without using a  
 16 cane. Through a lot of hard work on my own, it  
 17 progressively improved, but prospectively as of the  
 18 date of my discharge from Harleysville, as I said  
 19 previously, nobody knew when or if I'd be able to walk  
 20 normally again. I needed to use a device at that  
 21 point in time, and it was clear to anyone who could  
 22 see me that there was a problem with my gait.  
 23 Q. But you could walk with the help of a  
 24 device. You could do everything that you needed to do

Page 182

1 to go about your daily life activities?  
 2 A. Well, my daily life activities were impacted  
 3 by my ability to ambulate.  
 4 Q. That's not my question. You were, with some  
 5 limitation on your ability to ambulate, able to do all  
 6 of your daily life activities?  
 7 A. Well, my daily life activities prior to my  
 8 injury involved a lot of athletic and outdoor  
 9 activities that I couldn't do at that point because of  
 10 my injury.  
 11 Q. What were those?  
 12 A. I was an avid mountain biker. I previously  
 13 raced mountain bikes. I don't do that now. I seldom  
 14 ride. I still ride occasionally, but not frequently.  
 15 I used to kayak. I sold the kayak and never kayaked  
 16 again and haven't since. I used to hike in the  
 17 outdoors in the wilderness. Very seldom will I  
 18 attempt to do that now. I don't consider myself quite  
 19 as safe doing it as I once did.  
 20 Q. But you will do it on occasion?  
 21 A. Not to the same degree that I did before,  
 22 but as of the date of my discharge, I couldn't do it  
 23 at all.  
 24 Q. The limitations you had were on mountain

Page 183

1 biking, kayaking and serious hiking?  
 2 A. You asked me about my life-style and  
 3 activities, and those are some of my activities.  
 4 Q. Is there anything else of that ilk that you  
 5 weren't able to do?  
 6 A. I couldn't climb a ladder at that point, so  
 7 if I was in a situation where I had to climb a ladder,  
 8 I probably wouldn't be able to do it.  
 9 Q. Climbing a ladder was not something you  
 10 needed to do on a daily basis?  
 11 A. Well, in terms of the job situation, there  
 12 may have been a necessity at some point to observe an  
 13 elevated or a lowered operational exposure at a  
 14 client.  
 15 Q. Mr. Vail, please, listen to my question.  
 16 It's not something you needed to do on a daily basis?  
 17 A. It depends. There was no routine. There  
 18 could have been five days in a row that that may have  
 19 been a requirement.  
 20 Q. At any point in time that you were working  
 21 at Harleysville, did you have to climb a ladder five  
 22 days in a row?  
 23 A. No.  
 24 Q. At any time, did you have to climb a ladder

Page 184

1 that you can think of?  
 2 A. Many times.  
 3 Q. When did that occur?  
 4 A. Not in my time at Harleysville because I  
 5 hadn't yet had the opportunity to get back into the  
 6 field.  
 7 Q. My question was at Harleysville. Anything  
 8 else, other than the mountain biking, kayaking,  
 9 serious hiking and climbing a ladder?  
 10 A. I couldn't drive a car until I was medically  
 11 cleared to do so.  
 12 Q. We're talking about early September when you  
 13 had been medically cleared.  
 14 A. I could drive at that point.  
 15 Q. Anything else, other than the four things we  
 16 mentioning, mountain biking, kayaking, serious hiking  
 17 and climbing a ladder?  
 18 A. The disruption in my life basically revolved  
 19 around the inability to ambulate the same way I could  
 20 before. That's what I can think of right now. There  
 21 may have been others that may come to mind, given  
 22 enough time to think about it.  
 23 Q. I'm giving you the opportunity now. This is  
 24 your deposition.

Page 185

1 A. That's what I can think of right now.  
 2 MR. HALLER: Could we take a  
 3 five-minute break?  
 4 MS. HUTNIK: Sure.  
 5 (Break taken in the proceedings from  
 6 3:38 PM to 4:00 PM.)  
 7 (Whereupon exhibits Vail-26 through  
 8 Vail-28 were marked for identification.)  
 9 BY MR. HALLER:  
 10 Q. Mr. Vail, I've shown you three documents  
 11 marked 26, 27 and 28 respectively, and I'd like to ask  
 12 you about exhibit-26 first. This is a letter you sent  
 13 to Dr. Spence Reid on August 25th concerning your  
 14 return to work and a request for a supplementary  
 15 disability record form; is that right?  
 16 A. Yes.  
 17 Q. In it, you say that the doctor released you  
 18 to return to work at the office with a 30-pound  
 19 lifting restriction effective August 21st, 2000. Do  
 20 you see that?  
 21 A. Yes, I do.  
 22 Q. You make no mention of any other  
 23 restrictions at that point in time; do you?  
 24 A. Not in this letter.

Page 186

1 Q. Am I correct in understanding your testimony  
 2 that you were contacted by Luanne Arcaro at some point  
 3 after your return to say that the company had not  
 4 received any kind of authorization for you to return  
 5 to work?  
 6 A. My recollection is the same as this E-mail  
 7 on or about September 6th; that she sent me a message  
 8 about the doctor's note from work.  
 9 Q. As of 4:36 PM on September 6th, the company  
 10 didn't have any documentation of the release to work?  
 11 A. I don't know what they had. I don't recall  
 12 being asked to provide one before this time.  
 13 Q. You had not provided anything?  
 14 A. No.  
 15 Q. To your knowledge, Dr. Spence Reid did not  
 16 provide anything?  
 17 A. Other than what he might have sent them on  
 18 the previous disability forms. I don't recall which  
 19 exhibit and what date that was.  
 20 Q. Back in June.  
 21 A. That would be my understanding.  
 22 Q. So Luanne contacted you on September 6th at  
 23 3:57 PM to say she hadn't received a doctor's note,  
 24 and you responded at 4:36 PM saying that you hand

Page 187

1 delivered a signed original authorization?  
 2 A. Yes.  
 3 Q. So that was sometime after 3:57, but before  
 4 4:36?  
 5 A. Yes.  
 6 Q. Do you have exhibit-28 in front of you?  
 7 A. Yes, I do.  
 8 Q. Do you see that that exhibit includes a copy  
 9 of the return-to-work slip that you provided, which is  
 10 the one that makes no mention of any restriction, and  
 11 it has at the top received 9-6-00 from Ken Vail with  
 12 the initials LMA?  
 13 A. Yes.  
 14 Q. That would be what you gave Luanne Arcaro on  
 15 the 6th of September sometime after 3:57 PM?  
 16 A. Yes. As I mentioned earlier, I  
 17 inadvertently had two of these versions and gave her  
 18 the one that I could readily access.  
 19 Q. So as far as the medical documentation at  
 20 that point in time in Harleysville's possession, you  
 21 were cleared to return to work without any  
 22 restrictions?  
 23 A. This document doesn't indicate restrictions  
 24 that were discussed with the physician.

Page 188

1 Q. Understood. All I'm saying is that from the  
 2 perspective of what Harleysville was told by your  
 3 doctor based on the note that you gave them, there  
 4 were no restrictions?  
 5 A. Based on this note. The restrictions that  
 6 had been verbally discussed with Gary Weinstein and  
 7 also I had discussed with Dr. Reid and also with the  
 8 nurse practitioner were not indicated in this  
 9 document.  
 10 Q. What did you discuss with Gary Weinstein?  
 11 A. That I had serious mobility restrictions;  
 12 that I couldn't travel unless it was absolutely  
 13 necessary for business; that there was still somewhat  
 14 of restriction on what I could and what I couldn't do  
 15 based on the types of configuration of terrain and how  
 16 far away it might be; that I couldn't lift bulky,  
 17 heavy items.  
 18 Q. When did you have this conversation with  
 19 Gary Weinstein?  
 20 A. I remember having it again specifically when  
 21 he asked me to move the heavy boxes of files that were  
 22 sitting on the floor that were basically left over  
 23 from the previous branch manager.  
 24 Q. Let's take it in stages. In terms of any

Page 189

1 medical documentation, you would agree that what was  
 2 provided to Harleysville as of the 6th did not contain  
 3 any reference to limitations?  
 4 A. I don't recall what the previous disability  
 5 sheet said. Maybe we can go back to that exhibit, and  
 6 I can answer your question. I don't recall what it  
 7 said.  
 8 Q. You have no idea of when that was received  
 9 by Harleysville?  
 10 A. I never received that document, so I  
 11 wouldn't know.  
 12 Q. So based on what you had given them, there  
 13 were no restrictions?  
 14 A. In print, yes.  
 15 Q. You attended a loss prevention seminar in  
 16 late August?  
 17 A. Yes.  
 18 Q. You did a presentation at that seminar?  
 19 A. I did.  
 20 Q. How many days was the seminar?  
 21 A. On or about the 28th through the 31st.  
 22 Q. Was that for everyone in the loss control  
 23 group?  
 24 A. My understanding is that the entire loss

Page 190

1 control organization was to be there.  
 2 Q. Did you spend the whole time at the  
 3 seminar? Were you there for the whole thing?  
 4 A. My recollection is that I was.  
 5 Q. Where was the seminar?  
 6 A. I recall it was at a Holiday Inn in the  
 7 Harrisburg area.  
 8 Q. You drove to Harrisburg from your house?  
 9 A. I did.  
 10 Q. Approximately how long a drive is that?  
 11 A. If I were to estimate from my home to that  
 12 facility, approximately 80 miles to 85, perhaps.  
 13 That's just a guess.  
 14 Q. You actually did a presentation at the  
 15 seminar?  
 16 A. I did.  
 17 Q. Were you using a cane at the seminar?  
 18 A. I was using both a crutch and a cane  
 19 interchangeably.  
 20 Q. Were you using a single crutch?  
 21 A. A single crutch. Not at the same time. I  
 22 said interchangeably.  
 23 Q. So when you used the crutch, you would not  
 24 have weight on your leg; is that right?

Page 191

1 A. Well, the purpose of using the assistive  
 2 device was to have more stable ambulation than what I  
 3 could do otherwise. I couldn't walk without the  
 4 device.  
 5 Q. But you could put pressure on your leg?  
 6 A. I could put some pressure, but I couldn't  
 7 put full weight bearing on it.  
 8 Q. So you were using both a cane and a crutch  
 9 during that seminar?  
 10 A. Yes.  
 11 Q. Do you recall having any conversations with  
 12 Gary Weinstein during that seminar about your  
 13 performance?  
 14 A. Not specifically in the context of my  
 15 performance. I remember having conversations with  
 16 Craig Campbell and Gary Weinstein about scheduling of  
 17 work and assignment of work.  
 18 Q. What do you recall being discussed?  
 19 A. That we would make some reassignments among  
 20 individuals based on the work-load pattern that the  
 21 people had in hand currently.  
 22 Q. Anything else that you can recall being  
 23 discussed about work assignments?  
 24 A. Not specifically.

Page 192

1 Q. Do you recall where you were on catching up  
 2 with the QC reports and the vendor reports and  
 3 recommendations at that time?  
 4 A. I don't recall specifically where that was.  
 5 Q. Were you aware that members of your staff  
 6 made complaints about you to Alice Geckeler during  
 7 that seminar?  
 8 A. What I'm aware of is that the human  
 9 resources department and Gary Weinstein assembled my  
 10 staff immediately after a human resources seminar on  
 11 various aspects of harassment and different types of  
 12 treatment.  
 13 Q. Alice Geckeler was there making a  
 14 presentation?  
 15 A. I believe so. I recall that she was.  
 16 Q. At what point in the seminar was that  
 17 presentation?  
 18 A. That was, to my recollection, near the end.  
 19 Whether it was the very last one, I can't recall  
 20 specifically, but I'm sure the agenda from that  
 21 seminar would show it.  
 22 Q. How do you know that your staff met with  
 23 Alice Geckeler?  
 24 A. Gary Weinstein told me that he was



Page 193

1 assembling the staff to meet with Alice Geckeler in a  
2 closed-door session, and I should not be there.  
3 Q. When did he tell you this?  
4 A. I don't recall specifically what time of  
5 day, but it was somewhere near the end of the  
6 seminar.  
7 Q. So he told you this was going to happen at  
8 the seminar?  
9 A. Correct. The way it was portrayed to me was  
10 that it was in the context of soliciting staff  
11 feedback.  
12 Q. So Gary Weinstein came up to you at some  
13 point towards the end of the day of that third day of  
14 the seminar; right?  
15 A. I don't recall specifically what day it was,  
16 but it was near the end.  
17 Q. Do you remember where you were when this  
18 conversation occurred?  
19 A. Not specifically. I have a vague  
20 recollection that we may have been by ourselves in the  
21 seminar room after the other participants had left for  
22 the day. Alternatively, and I'm speculating, but I  
23 don't recall specifically, the other place it could  
24 have been, and I don't have a specific recollection of

Page 194

1 where that was, was in the lobby of the hotel on one  
2 of the couches. I don't recall specifically.  
3 Q. What do you remember as specifically as you  
4 can recall from beginning to end in chronological  
5 order that Gary said to you?  
6 A. I don't recall specifically what he said,  
7 other than that he was gathering the staff together to  
8 meet with Alice Geckeler to solicit feedback, and I  
9 thought that was kind of odd, but I found Mr.  
10 Weinstein to be somewhat unpredictable over the course  
11 of my association with him, so that type of behavior  
12 in and of itself wasn't necessarily strange for him.  
13 Q. My question was what was said.  
14 A. I don't recall specifically what was said,  
15 other than what I've already portrayed to you.  
16 Q. Beyond what you've just said, you have no  
17 information as to how that meeting came about?  
18 A. No, other than that's what I was told. I  
19 was also told after that meeting that there would be a  
20 debrief of what information was gleaned at that  
21 meeting, and the pretext for summoning me on September  
22 7th was to have that feedback discussion. I had no  
23 idea I was about to be discharged.  
24 Q. I'm trying to go sequentially through this.

Page 195

1 Try to answer the question as asked. Beyond being  
2 told that Gary Weinstein was assembling your staff to  
3 meet with Alice Geckeler, you have no information as  
4 to how that came about?  
5 A. No.  
6 Q. You were not privy to the discussions that  
7 occurred between your staff and Alice Geckeler?  
8 A. No. Quite to the contrary, I was  
9 specifically told not to be in attendance.  
10 Q. So you obviously did not go to the meeting.  
11 Did anyone report to you what had occurred at the  
12 meeting?  
13 A. No.  
14 Q. Did you leave Harrisburg whilst that meeting  
15 was going on?  
16 A. My recollection was that the Mid-Atlantic  
17 staff were retained for that discussion, and that all  
18 others were free to leave. I specifically was asked  
19 not to stay.  
20 Q. So you left?  
21 A. I left.  
22 Q. You have no knowledge as to the internal  
23 discussions within Harleysville about the information  
24 that they received from that group meeting?

Page 196

1 A. No. None of that was shared with me. In  
2 fact, I expected the debrief to happen, and that it  
3 would be shared with me, but that never took place.  
4 Q. Did you at any time talk to members of your  
5 staff to try and find out what had been said at the  
6 meeting?  
7 A. After the discharge was effected, I had  
8 called one individual who did not return the call, and  
9 I received a call from Craig Campbell who had assumed  
10 some, if not all of the responsibilities that I had,  
11 and Craig asked me not to call anyone else. I honored  
12 that wish.  
13 Q. So you really got no information?  
14 A. None.  
15 Q. Sitting here today, you have no additional  
16 information as to what happened at that meeting?  
17 A. Well, there were some scribble notes  
18 produced to the EEOC. I found them repugnant to go  
19 through, so I didn't go through them page by page. I  
20 have no knowledge as far as anybody participating in  
21 that meeting as far as what was said or what the  
22 context was. Nothing was shared with me.  
23 Q. When you say you found it repugnant to go  
24 through those notes, what do you mean by that?

Page 197

1 A. What I saw in my recollection were issues  
2 that were taken out of context and twisted almost as  
3 if there was a conspiracy that those kind of comments  
4 were openly solicited, but I have no knowledge because  
5 I wasn't at the meeting, nor was I debriefed about its  
6 contents.  
7 Q. You are aware, based upon those notes, that  
8 there were complaints made by your staff about your  
9 management style and interaction with them?  
10 A. I found the notes hard to decipher, but I  
11 could make out bits and pieces enough to know that  
12 there were concerns that were shared. Again, this is  
13 all well after the termination.  
14 Q. So that Harrisburg meeting was right at the  
15 end of August. Was there Labor Day somewhere in  
16 between?  
17 A. That's my recollection.  
18 Q. Was the 6th your first day back at work  
19 after Labor Day?  
20 A. After the Labor Day holiday, no, I don't  
21 believe so. I don't have a calendar in front of me,  
22 so I can't recall the specific sequence of dates. It  
23 may have been the 4th or 5th. The 6th would have been  
24 a Wednesday. I believe the 5th was a Tuesday. So my

Page 198

1 basic recollection is that would have been on or about  
2 the Tuesday I came back to work, and I remember  
3 spending time in the office that day.  
4 Q. The next day, you were supposed to go on a  
5 field trip?  
6 A. The next day, in fact, I did.  
7 Q. Did you have any interaction with Mr.  
8 Weinstein either on the 5th or 6th that you can  
9 recall?  
10 A. Mr. Weinstein would have spoken with me on  
11 the 5th. Mr. Weinstein called me on the 6th as I was  
12 en route, as I had mentioned before, to go to the  
13 Susquehanna branch office, and Mr. Weinstein directed  
14 me to return to the Harleysville home office that day;  
15 to basically terminate my trip to Maryland where I was  
16 headed and turn around and come back.  
17 Q. Was it in the morning that you had that  
18 conversation with him?  
19 A. Yes, it would have been on or about late  
20 morning. There may be cell phone records that may  
21 establish the exact time.  
22 Q. You came back to the office about what  
23 time?  
24 A. I don't recall specifically. It was



Page 199

1 afternoon, perhaps mid afternoon.  
 2 Q. Did you speak to Mr. Weinstein that  
 3 afternoon?  
 4 A. Yes, I did. Mr. Weinstein told me that he  
 5 intended to arrange a meeting with Alice Geckeler and  
 6 myself to go through the staff feedback that had been  
 7 collected at that meeting at the seminar in  
 8 Harrisburg.  
 9 Q. Do you remember what time of day he said  
 10 that to you?  
 11 A. It would have been after my return. I'm  
 12 just guessing. I don't remember specifically, but it  
 13 would have been late afternoon.  
 14 Q. Did you have any other interaction with Mr.  
 15 Weinstein on that day?  
 16 A. Which day?  
 17 Q. September 6th.  
 18 A. That was the day Mr. Weinstein asked me to  
 19 move the boxes. We were sitting in his office.  
 20 "Gary, I can't move boxes right now. Can't that wait  
 21 until some other time?" He said, yes, it could. He  
 22 told me he was dissatisfied with my performance. He  
 23 didn't discuss any specific consequences with that. I  
 24 expected when he said that we were going to meet with

Page 200

1 Alice Geckeler for a debrief, that that's what it was  
 2 about. I had no idea that he planned to terminate my  
 3 employment.  
 4 Q. Anything else you can recall about your  
 5 interaction with Mr. Weinstein on that day, the 6th of  
 6 September?  
 7 A. The most remarkable components that I can  
 8 recall on the 6th were being called to return to the  
 9 home office because there was an urgent meeting he  
 10 wanted me to have with Alice Geckeler. I got back to  
 11 the office. Mr. Weinstein avoided me for most of that  
 12 period, and then later, he came out to speak with me  
 13 and summoned me to his office. I took my crutch or  
 14 cane, whatever I had at the time, and went over to his  
 15 office. We had the discussion. He asked me about the  
 16 boxes. We already talked about that. The meeting  
 17 that was supposed to be so urgent never took place, so  
 18 he asked me to return to the office again tomorrow on  
 19 the 7th, which I did.  
 20 Q. So the next day you came in, and at some  
 21 point, you had a meeting with Alice Geckeler and Gary  
 22 Weinstein?  
 23 A. Yes. I don't remember exactly when that  
 24 was. It could have been mid to late morning. Most of

Page 201

1 that morning, Mr. Weinstein had avoided eye contact  
 2 with me. I didn't know what to make of that. He  
 3 summoned me to the meeting. He was apparently already  
 4 in Miss Geckeler's office and called me to come over,  
 5 which was on the far side of the facility at that  
 6 time, but it was quite a distance to get to, so it  
 7 took me some amount of time to get there. They  
 8 invited me into the office. The first thing I asked  
 9 is, and I have a specific recollection of this,  
 10 "Before we get started, can you tell me where it  
 11 stands with posting the open position on the  
 12 Monster.com website?" I was recruiting for a loss  
 13 control representative at that point. Alice Geckeler  
 14 deferred that answer to Gary, and we never really got  
 15 into it. I remember Gary Weinstein told me that  
 16 things weren't working out. I can't recall the exact  
 17 language. I don't have a transcript. I didn't take  
 18 specific notes of what was said. I do recall in  
 19 general he said that my employment was being  
 20 terminated. I was surprised by that. I didn't expect  
 21 that. I truly expected that he was honoring his word  
 22 to bring me in for a debrief with staff, which never  
 23 occurred.  
 24 Q. Can we focus on what was then as opposed to

Page 202

1 your comment?  
 2 A. We can do that.  
 3 Q. So he told you that he was terminating your  
 4 employment?  
 5 A. Yes, he did. Since he had told me the  
 6 comment the previous day that he was dissatisfied with  
 7 my performance, I asked, "Is there a reason I'm not  
 8 being offered a performance improvement plan?" I  
 9 asked that question to Alice Geckeler. Miss Geckeler  
 10 put her hands up and gestured toward Mr. Weinstein and  
 11 kind of shrugged her shoulders for him to answer. Mr.  
 12 Weinstein answered that question by stating, "You're  
 13 at the level in the organization that we don't have to  
 14 follow those procedures." I was given a packet of  
 15 information, and when I opened the packet of  
 16 information, what it said was that my job had been  
 17 eliminated. There was a reduction-in-force inventory  
 18 attached to it that showed the individuals who were  
 19 impacted as a result of the reduction in force. There  
 20 was a severance agreement that was included in the  
 21 packet that said that my performance was acceptable or  
 22 satisfactory. I can't remember the exact language.  
 23 If I would sign off on the severance agreement, I  
 24 would be eligible for certain resources, which

Page 203

1 included a one-time payment plus extension of COBRA  
 2 benefits plus whatever else the agreement said, which  
 3 I'm sure you can go through specifically if you wish.  
 4 Q. At some point soon thereafter, you went and  
 5 consulted with a lawyer; is that right?  
 6 A. The severance agreement paperwork suggested  
 7 that this document be run through legal counsel, and I  
 8 followed that suggestion and went to see counsel.  
 9 Q. Then your counsel corresponded with  
 10 Harleysville about the severance package; is that  
 11 correct?  
 12 A. Yes. I had authorized counsel to write to  
 13 Catherine Strauss, who by my recollection was the  
 14 senior human resources officer for Harleysville,  
 15 requesting her to give consideration to what I  
 16 considered to be more equitable compensation for  
 17 severance, given the nature and character with which  
 18 the discharge was conducted.  
 19 Q. Then do you recall that your counsel  
 20 received a letter explaining that the paperwork  
 21 reflecting a reduction in force had been given to you  
 22 in error; that that was not the situation?  
 23 A. I understand that Harleysville's counsel  
 24 wrote that letter, and I disagree that the premise was

Page 204

1 in error. I remember my counsel received that  
 2 letter.  
 3 Q. So you were aware shortly after your  
 4 termination that from Harleysville's perspective, this  
 5 was a termination for performance reasons and not a  
 6 reduction in force?  
 7 A. At that point, paperwork I had been given  
 8 was clear as to reduction in force.  
 9 Q. I understand, Mr. Vail, but that was given  
 10 to you. Very soon thereafter, somebody from  
 11 Harleysville explained that that paperwork was given  
 12 in error, and this was a performance-based  
 13 termination?  
 14 A. There was another provision.  
 15 Q. Can you answer my question? That's what  
 16 happened; isn't it? I didn't ask you about another  
 17 provision right now.  
 18 A. Please, restate the question.  
 19 Q. The question was: Shortly after you  
 20 received the package, your counsel was put on notice  
 21 by Harleysville that the package stating there was a  
 22 reduction in force was given to you in error?  
 23 A. That's my understanding.  
 24 Q. You have no personal knowledge as to the

Page 205

1 circumstances under which that package was put  
 2 together; do you?  
 3 A. I'm not sure I understand the question.  
 4 Q. You have no personal knowledge how it came  
 5 about that the package saying that there was a  
 6 reduction in force came to be put together and handed  
 7 to you?  
 8 A. All I know is that Alice Geckeler signed the  
 9 letter. What I don't know is who may have been  
 10 involved in crafting the decision.  
 11 Q. You personally have no firsthand knowledge  
 12 as to the reasons for your termination?  
 13 A. Other than what was shared with me with the  
 14 documents on September 7th.  
 15 Q. Gary Weinstein told you in the meeting that  
 16 you were being terminated for performance reasons,  
 17 didn't he, on September 7th?  
 18 A. I don't recall that language being used.  
 19 What I recall specifically was that it's a poor-fit  
 20 issue. I don't recall ever being given anything that  
 21 said that I was being terminated for performance.  
 22 Quite the contrary, I was given a document that said I  
 23 was being terminated for reduction in force. There  
 24 was no discussion by Gary Weinstein that I was being

Page 206

1 terminated because of performance, and Alice Geckeler  
 2 told me that was a fit issue.  
 3 Q. She told you that --  
 4 A. She told me it was a poor fit.  
 5 Q. Please, let me finish my question.  
 6 A. I thought you were finished.  
 7 Q. She told you that the company decided that  
 8 you were not a good fit for the organization?  
 9 A. That's the gist of it.  
 10 Q. Did you understand that in the circumstances  
 11 of the performance counseling you'd received from Mr.  
 12 Weinstein plus the complaints received from your  
 13 direct reports that Harleysville did, in fact, reach  
 14 the conclusion that this was obviously not a good fit  
 15 for the organization?  
 16 MS. HUTNIK: I'm going to object to the  
 17 form.  
 18 BY MR. HALLER:  
 19 Q. You may answer.  
 20 A. Please, restate the question. I don't want  
 21 to presume I remember it.  
 22 Q. When you were told in the termination  
 23 meeting that you were being terminated because of a  
 24 poor fit, did you understand that the company had

Page 207

1 reached that conclusion based on performance issues  
 2 that Gary Weinstein had directly raised with you, as  
 3 well as complaints received from your staff?  
 4 A. Let's take that as a two-part question  
 5 because that's what's being asked of me. The first  
 6 part is the performance issues shared by Gary  
 7 Weinstein. I had no idea that my job was in jeopardy  
 8 because of those so-called performance issues. The  
 9 second part of your question involves complaints from  
 10 staff. The complaints from staff that were allegedly  
 11 gathered as of the close of the seminar in Harrisburg  
 12 were never shared with me at that point, so I would  
 13 have had no knowledge of what those complaints were.  
 14 To answer your question, no.  
 15 Q. Did that thought ever occur to you; that  
 16 maybe the writing was on the wall, and I understand  
 17 how the decision was made, although you may not have  
 18 agreed with it?  
 19 A. Well, given the fact that I asked the  
 20 question why wasn't I being offered a performance  
 21 improvement plan, the notion entered my mind that  
 22 based on the prior discussion the day before with Mr.  
 23 Weinstein about performance and then having been lied  
 24 to for the purpose of meeting, it was an appropriate

Page 208

1 question, and I asked it. I think the answer to your  
 2 question is, yes. However, the answer I got was  
 3 something very different. I wasn't told expressly  
 4 that it wasn't for performance. I was told that it  
 5 was a fit issue.  
 6 Q. When you asked the question about a  
 7 performance plan, did Mr. Weinstein answer the  
 8 question?  
 9 A. He answered the question, but not in a  
 10 manner that I would have expected based on my  
 11 knowledge of Harleysville's supervisor orientation  
 12 session.  
 13 Q. He said, "We don't have to do that for  
 14 someone at your level?"  
 15 A. In essence, that's what he said.  
 16 Q. Do you have any personal knowledge as to  
 17 what Mr. Scott Welsh said to Alice Geckeler about his  
 18 experience with you?  
 19 A. No.  
 20 Q. Do you agree that it's an unusual thing for  
 21 staff members to take up the courage to complain about  
 22 their manager?  
 23 A. I've heard of it done briefly, but never  
 24 like this. I find it highly unusual.

Page 209

1 Q. Do you have any knowledge as to what Jerry  
 2 Walker told Alice Geckeler about his interaction with  
 3 you?  
 4 A. No. In fact, I have no knowledge about what  
 5 any of the staff said about me. If you want to go  
 6 through it item by item, you can solve that now.  
 7 Q. You have not talked to any of them about  
 8 what they said?  
 9 A. No. As I told you previously, I made one  
 10 phone call to one individual, and I was asked not to  
 11 contact anyone, and I honored that request.  
 12 Q. In circumstances where staff members have  
 13 expressed serious concerns about management style and  
 14 confidence in the manager, do you understand that it's  
 15 a legitimate conclusion for the company to reach that  
 16 this isn't a good fit?  
 17 MS. HUTNIK: Objection to form.  
 18 You can answer.  
 19 THE WITNESS: Having been denied, from  
 20 my perspective, due process under Harleysville's own  
 21 procedures, no, I don't agree with that as a  
 22 reasonable conclusion.  
 23 BY MR. HALLER:  
 24 Q. Let's put due process aside. I understand

Page 210

1 you're claiming that you should have gone through a  
 2 performance improvement plan. Would you, at least,  
 3 concede that when a manager has lost the confidence of  
 4 his entire staff, whether you agree with it or not,  
 5 that it's a reasonable conclusion for the company to  
 6 say this isn't a good fit?  
 7 A. I don't have the knowledge to speak to your  
 8 basic premise. I don't know what was said. I don't  
 9 know the context. I had no chance to put it in  
 10 perspective or rebut it at this time. I think there  
 11 were some very strong personalities that thought they  
 12 could manipulate the system to buck a demanding boss  
 13 off their backs, and I think that's exactly what  
 14 happened.  
 15 Q. Do you understand that a performance  
 16 improvement plan necessarily requires the achievement  
 17 of certain achievable objectives in order to be  
 18 effective?  
 19 A. It would be my preference to construct a  
 20 performance improvement plan where the objectives are  
 21 reasonable and achievable, yes.  
 22 Q. Do you understand and agree that it's very  
 23 difficult to even consider a performance improvement  
 24 plan when the issues include total loss of confidence

Page 217

1 your question is that's correct.  
 2 Q. What I'm trying to do is understand your  
 3 personal knowledge in this case.  
 4 A. Sure.  
 5 Q. I appreciate that answer. Other than what  
 6 you've described in today's deposition, do you have  
 7 any facts which support your claim for age  
 8 discrimination?  
 9 A. One interaction that I had with Craig  
 10 Campbell prior to the termination involved him  
 11 incorrectly guessing my age. He had me pegged as  
 12 early to mid thirties for some reason, and he was  
 13 quite shocked to find out that I was over 40. I  
 14 remember him remarking about that. I do know that he  
 15 did pick up a substantial part of the work-load when I  
 16 was incapacitated. I would offer you that.  
 17 Q. Was this in a conversation with him that the  
 18 issue of your age came up?  
 19 A. Yes.  
 20 Q. Can you describe the context to me of that  
 21 conversation?  
 22 A. I don't recall specifically what the topic  
 23 was that led to it, but I do recall that he found it  
 24 to be remarkable.

Page 218

1 Q. He thought you were younger than you were?  
 2 A. Correct.  
 3 Q. Did you take that as a compliment?  
 4 A. I took that as an observation.  
 5 Q. Other than what you've just described and  
 6 your earlier testimony in your deposition, do you have  
 7 any other facts which you believe support your claim  
 8 of age discrimination?  
 9 A. Going back to the original reduction in  
 10 force paperwork, no other manager similarly in my age  
 11 group within the loss control services were discharged  
 12 as a result of that reduction in force.  
 13 Q. So the older people were retained?  
 14 A. That's my understanding.  
 15 Q. It's true, is it not, that, in fact, nobody  
 16 was being laid off at that time based on that  
 17 paperwork that you were given?  
 18 A. I'm sorry. I don't have that  
 19 understanding. I believe that if we were to go back  
 20 to the actual reduction in force inventory, you would  
 21 see that there were other individuals, not necessarily  
 22 in loss control services, who were impacted by a  
 23 reduction in force, at least that's what the paperwork  
 24 says.

Page 219

1 Q. There was nobody in loss control services  
 2 that was being impacted by a reduction in force; was  
 3 there, on the paperwork you received?  
 4 A. Not to my knowledge.  
 5 Q. Other than what you've now described in this  
 6 deposition, do you have any other facts to support  
 7 your claim of age discrimination?  
 8 A. That's all I can think of right now.  
 9 Q. Other than what you've described today in  
 10 your deposition, do you have any other facts to  
 11 support your claim of disability discrimination?  
 12 A. Yes. It's quite possible that Harleysville  
 13 not only perceived me as being disabled, but, in fact,  
 14 thought that the disability was worse than what it  
 15 was.  
 16 Q. I'm not asking for your speculation. I'm  
 17 asking whether you have any facts, other than what  
 18 you've described, that would support your claim of  
 19 disability discrimination.  
 20 A. What's covered in the complaint and what's  
 21 been shared in the request for production of documents  
 22 would speak to the issue of discrimination. The fact  
 23 that my gait was clearly noticeable to anyone who  
 24 looked at me in Harleysville. In fact, frequently

Page 220

1 associates at Harleysville asked me what happened and  
 2 why am I on crutches or why am I walking funny. I  
 3 would answer them and tell them that I was injured,  
 4 and I don't know if I'll recover, but hopefully, I  
 5 will, and I'll do my best to do it. It was clear to  
 6 anyone that I encountered, whether it was in the  
 7 cafeteria, in the hallway, somebody who saw me moving  
 8 slowly, whether it was Steve Vondercrone staring at me  
 9 from the other side of the room at a seminar. Anybody  
 10 could tell that I had a serious ambulation problem.  
 11 Looking at this case with the information that was  
 12 known to Harleysville about whether I would or  
 13 wouldn't return to some semblance of even normal  
 14 ambulation, they had no way to know that. I think we  
 15 need to look at this case from the decision freeze  
 16 framed as of September 7th whether they made the  
 17 determination to discharge me.  
 18 Q. I'm trying to get at what facts you have.  
 19 We've been through the deposition and gone through the  
 20 events that occurred and conversations you've had.  
 21 I'm not asking for your theory of the case. I'm not  
 22 asking for your speculation as to what may have  
 23 happened. I'm just simply asking: From your personal  
 24 knowledge, is there anything beyond that which you

Page 221

1 have described in your deposition up to the last  
 2 question and answer, any other facts that you believe  
 3 support your claim for disability discrimination?  
 4 A. The facts for my disability discrimination  
 5 really revolves around the ambulation issue, and as I  
 6 can recall it at this point, the information that's  
 7 been shared with the EEOC and in the complaint and  
 8 introduced for discovery covers that issue. I can't  
 9 think of anything else right now.  
 10 Q. If we freeze frame it, as you suggested, as  
 11 of September 7th, you agree, do you not, that what the  
 12 company was told in a return-to-work slip was that you  
 13 were free to return without restriction?  
 14 A. I disagree with that statement. Based on  
 15 the document --  
 16 Q. Based on what document?  
 17 A. The one I'm referring to is the one that Dr.  
 18 Spence Reid sent to human resources in Harleysville  
 19 having the restriction on weight lifting and the  
 20 reduction on ambulation. There were three  
 21 restrictions in that document. We can go back to it.  
 22 Q. But you have no knowledge, and we've talked  
 23 about this before, when that was received by  
 24 Harleysville?

Page 222

1 A. Other than the date that's on it.  
 2 Q. Throughout the summer of 2000, you were  
 3 telling Mr. Weinstein that you expected to make a full  
 4 recovery; correct?  
 5 A. I expected to. Whether I could, who knew?  
 6 Q. And it was your position throughout the  
 7 summer that you were able to perform the essential  
 8 functions of your job with the modifications that were  
 9 made to your schedule; right?  
 10 A. I thought so at the time.  
 11 Q. When you were ready to come back to work,  
 12 you thought you were able to fully perform your job as  
 13 of August 21st, 2000?  
 14 A. What I thought at that point on August 21st  
 15 of 2000 was I was increasingly able to perform all  
 16 aspects. In terms of ambulation on field construction  
 17 sites and whatnot, that would not have been my  
 18 expectation at that point in time.  
 19 Q. Did you personally make any written requests  
 20 to Gary Weinstein or anyone else at Harleysville for  
 21 any limitations on your work after August 21st?  
 22 A. Other than the documents that have been  
 23 shared, I don't recall any specifically. Gary and I  
 24 had oral conversations around that issue.



Page 223

1 Q. Did you make a request to Gary orally for  
 2 any modifications or limitations to be in effect after  
 3 your return to work on August 21st?  
 4 A. Yes.  
 5 Q. What specifically did you request of him  
 6 orally?  
 7 A. On September 6th, I asked him to defer  
 8 handling the clean-up of those various boxes of  
 9 materials and files, among others.  
 10 Q. Which he respected. Anything else?  
 11 A. We talked about the restriction on travel to  
 12 the point where I could get up to full speed on going  
 13 out to, say, western Pennsylvania again, which at that  
 14 point, I really wasn't prepared to do. Other than  
 15 those, there are none that I can recall at this  
 16 point.  
 17 Q. So beyond what we've now discussed in the  
 18 deposition, is there anything else that you believe  
 19 would support your claim for disability  
 20 discrimination?  
 21 A. Not that I can think of right now.  
 22 Q. As far as you're aware from the company's  
 23 perspective, they were of the belief that you should  
 24 be able to fully perform your job as of August 21st?

Page 224

1 A. I don't know what the company believed.  
 2 Q. So we'd have to ask Gary Weinstein, Alice  
 3 Geckeler and others as to what they believed?  
 4 A. I think that would be a reasonable  
 5 expectation.  
 6 Q. In response to interrogatories, you listed  
 7 Steve Vondercrone who might have information relevant  
 8 to this case. Could you explain what information he  
 9 may have?  
 10 A. He, as I recall, was Harleysville's general  
 11 counsel, and I don't know specifically what  
 12 documentation or consultations he may have been  
 13 involved in, but I do know that when I returned after  
 14 August 21st, I was involved in a seminar that he was  
 15 also involved in, and I noticed a distinct change in  
 16 his demeanor, in which he looked at me quite different  
 17 than he did before my injury. My inference from that  
 18 is that he seemed to know something that I didn't.  
 19 What that something was is yet to be discovered from  
 20 my perspective.  
 21 Q. Did you have any dealings with him before  
 22 you went out on your injury? Did you have any direct  
 23 contacts with him before you went out on your medical  
 24 leave?

Page 225

1 A. Yes.  
 2 Q. In what context did you deal with Steve  
 3 Vondercrone?  
 4 A. He was a presenter in one of the seminars.  
 5 I believe it was the supervisory orientation session,  
 6 if I'm not mistaken. He was, at the time, pinch  
 7 hitting for one of his associates who, I believe, was  
 8 sick. He actually presented it to the class.  
 9 Q. You were in a class environment?  
 10 A. Yes.  
 11 Q. Did you have any one-on-one contact with  
 12 him?  
 13 A. I did. We had some discussion. I told him  
 14 I thought he did a nice job in the seminar. We talked  
 15 a little bit about some of the concepts. It was maybe  
 16 a five-minute discussion.  
 17 Q. When was the next time you had any direct  
 18 dealings with him?  
 19 A. Direct dealings were visual in nature after  
 20 my return after August 21st. I don't recall the exact  
 21 date. It may have been on or about August 23rd.  
 22 There was some seminar that I was scheduled to be in  
 23 that had been scheduled before my injury that he  
 24 apparently was also participating in.

Page 226

1 Q. Did you have any conversation with him?  
 2 A. I think I might have said hello to him.  
 3 Q. Did he say hello back?  
 4 A. I believe so.  
 5 Q. Did anything else transpire between the two  
 6 of you?  
 7 A. Not that I can recall on that day.  
 8 Q. Did you have any other dealings with him?  
 9 A. Other dealings with him? I've seen him out  
 10 and about, but not in any way connected to business or  
 11 personal discussions.  
 12 Q. So what you've just described is the full  
 13 extent of what you believe is his involvement in this  
 14 case?  
 15 A. That's my personal knowledge. I've given  
 16 you the best I have to explain it.  
 17 Q. So you just have some vague perception that  
 18 he looked at you differently in August than the  
 19 earlier seminar?  
 20 A. It's a specific recollection. It's not  
 21 vague. What involvement he may have will have to be  
 22 discovered.  
 23 Q. Could you describe the look? I don't really  
 24 understand your testimony. You said hello to him, and

Page 227

1 he said hello to you. What else happened  
 2 specifically?  
 3 A. It was a long, blank stare, a stone-faced  
 4 stare like I wasn't even there.  
 5 Q. Maybe he didn't remember you.  
 6 A. Perhaps not.  
 7 Q. So you really don't know what is behind the  
 8 blank stare?  
 9 A. Not specifically, no.  
 10 Q. Could he have been preoccupied with  
 11 something else?  
 12 A. I'd just be speculating.  
 13 Q. We have not received the seminar materials  
 14 that you claim were produced to your counsel  
 15 concerning the orientation. I would request that to  
 16 the extent that you have those that they be produced.  
 17 A. Please, make your request to counsel.  
 18 Q. I'm doing it on the record.  
 19 MS. HUTNIK: I'll contact you.  
 20 BY MR. HALLER:  
 21 Q. Since September 7th, 2000, have you  
 22 undergone or received any treatment for any mental or  
 23 emotional problems?  
 24 A. No.

Page 228

1 Q. Other than what you've described in terms of  
 2 the activities such as mountain biking, kayaking and  
 3 serious hiking, have there been any other significant  
 4 changes in your life-style since your injury?  
 5 A. You mean at the time of my discharge, or do  
 6 you mean now?  
 7 Q. I mean in general terms in that entire  
 8 period of time.  
 9 A. In general terms, let's go back to September  
 10 7th. There were significant reductions in what I  
 11 could and couldn't do ambulation-wise. You asked the  
 12 question. I'm just answering it.  
 13 Q. Other than that.  
 14 A. I had restrictions on travel, which I think  
 15 I addressed previously. I don't want to rehash ground  
 16 we've already been over.  
 17 Q. Did you have a strong relationship with your  
 18 wife?  
 19 A. In the context of our relationship, if  
 20 you're asking physically did we continue to have  
 21 relations, no, that was seriously impacted as a result  
 22 of the injury. I'd prefer not to get into those  
 23 details, as I'm sure you could appreciate.  
 24 Q. I understand that in the early stages of

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

---  
KENNETH T. VAIL, : CIVIL ACTION  
Plaintiff, :  
 : NO. 02-CV-2933  
VS. :  
 :  
HARLEYSVILLE GROUP, INC., :  
Defendant. :

---  
Friday, June 11, 2004  
---

Oral Deposition of KENNETH T. VAIL,  
taken pursuant to notice, at the Law Office of Donald  
P. Russo, 117 East Broad Street, Bethlehem,  
Pennsylvania, beginning at 3:40 PM, before Dennis  
Corsi, Registered Professional Reporter and Notary  
Public.

---  
DENNIS CORSI COURT REPORTING  
Registered Professional Reporters  
814 Park Avenue  
Collingswood, New Jersey 08108  
(856) 854-7223

CONDENSED TRANSCRIPT WITH KEY-WORD INDEX

Page 236

1  
 2  
 3 IN THE UNITED STATES DISTRICT COURT  
 4 FOR THE EASTERN DISTRICT OF PENNSYLVANIA  
 5  
 6 KENNETH T. VAIL, CIVIL ACTION  
 7 Plaintiff, No. 02-CV-2933  
 8 VS.  
 9 HARLEYSVILLE GROUP, INC.,  
 10 Defendant.  
 11  
 12 Friday, June 11, 2004  
 13  
 14 Oral Deposition of KENNETH T. VAIL,  
 15 taken pursuant to notice, at the Law Office of Donald  
 16 P. Russo, 117 East Broad Street, Bethlehem,  
 17 Pennsylvania, beginning at 3:40 PM, before Dennis  
 18 Corsi, Registered Professional Reporter and Notary  
 19 Public.  
 20  
 21  
 22 DENNIS CORSI COURT REPORTING  
 23 Registered Professional Reporters  
 24 914 Park Avenue  
 Collingswood, New Jersey 08108  
 (856) 854-7223

Page 237

1  
 2 APPEARANCES:  
 3 MICKEY K. THOMPSON, ESQUIRE  
 4 Law Office of Donald P. Russo  
 5 117 East Broad Street  
 6 P.O. Box 1890  
 7 Bethlehem, PA 18016-1890  
 8 Counsel for Plaintiff  
 9 ANTHONY B. HALLER, ESQUIRE  
 10 Blank Rome, LLP  
 11 One Logan Square  
 12 18th and Cherry Streets  
 13 Philadelphia, PA 19103-6998  
 14 Counsel for Defendant  
 15  
 16 (It is stipulated by and between  
 17 counsel for the respective parties that signing,  
 18 sealing, certification and filing are waived; and  
 19 that all objections, except as to the form of the  
 20 question, are reserved until the time of trial.)  
 21  
 22 ...KENNETH T. VAIL, having been duly  
 23 sworn, was examined and testified as follows...  
 24

Page 238

1 BY MR. HALLER:  
 2 Q. Good afternoon, Mr. Vail. This is the  
 3 resumption of your deposition. I want, first of all,  
 4 to just go back through the ground rules which we had  
 5 established to make sure they're fresh in your mind.  
 6 First of all, would you agree to answer the questions  
 7 that I ask fully and to the best of your knowledge?  
 8 A. Yes.  
 9 Q. If you don't understand a question that I  
 10 ask, please, would you tell me?  
 11 A. I will.  
 12 Q. If you don't say anything, I'll assume that  
 13 you've understood the question. Is that fair and  
 14 understood?  
 15 A. I understand.  
 16 MR. THOMPSON: Before we begin, I  
 17 believe we've agreed that there was an hour's length  
 18 of deposition today.  
 19 MR. HALLER: I believe we have an hour  
 20 left. What I'd like to do is try and finish whatever  
 21 we need to do without going to the court. I think we  
 22 can do it in an hour.  
 23 MR. THOMPSON: Okay.  
 24 BY MR. HALLER:

Page 239

1 Q. Mr. Vail, I'm going to put before you what  
 2 we'll mark as Vail deposition 30.  
 3 (Whereupon exhibit Vail-30 was marked  
 4 for identification.)  
 5 BY MR. HALLER:  
 6 Q. Mr. Vail, do you recognize this to be a  
 7 complaint that you and your wife filed against an  
 8 individual named Peter Gill in connection with the  
 9 injury that you sustained on or about June 2nd, 2000?  
 10 A. Yes, I remember filing a complaint. I can't  
 11 recall the exact word-by-word. If you care for me to  
 12 read it, I will.  
 13 Q. I'm just asking you generally if you  
 14 recognize this document.  
 15 A. Generally, yes.  
 16 Q. If you go to the second but last page, do  
 17 you see that there is a verification with your  
 18 signature on it?  
 19 A. I do.  
 20 Q. That is your signature; is it not?  
 21 A. It is.  
 22 Q. Do you in general terms, and, please, refer  
 23 to the document if you want, recollect that in the  
 24 lawsuit that you brought against Mr. Gill that you

Page 240

1 claimed that he was negligent when he shot you at the  
 2 National Tactical Invitational on June 2nd, 2000?  
 3 A. Yes. In general, I recall that was one of  
 4 the elements in the complaint.  
 5 Q. Do you recall, in your lawsuit, claiming  
 6 that as a result of his negligence and your injury  
 7 that you had suffered lost wages and other lost  
 8 employment benefits?  
 9 A. I'd have to look back through the  
 10 complaint. I don't have a recollection of that.  
 11 Q. Do you want to go to paragraph 16 of the  
 12 complaint?  
 13 A. Yes, that's in the complaint.  
 14 Q. It's true, is it not, that in the complaint,  
 15 you allege that you would be unable to pursue your  
 16 usual occupation for extended periods of time? Do you  
 17 see that?  
 18 A. That's what it says.  
 19 Q. And that you had suffered lost wages and  
 20 other lost employment benefits. Do you see that?  
 21 A. Yes, I do.  
 22 Q. It's true, is it not, that you ultimately  
 23 agreed to a settlement of your claims against Mr.  
 24 Gill?

Page 241

1 A. Yes, it is.  
 2 Q. And that you recovered a significant amount  
 3 of money in that lawsuit; isn't that true?  
 4 A. There was a settlement, yes.  
 5 Q. A settlement of a significant amount of  
 6 money; right?  
 7 A. I'd like you to define a significant amount  
 8 of money.  
 9 Q. Do you want to tell me what the settlement  
 10 was?  
 11 A. I don't recall the specific amount of  
 12 money. Do you have a settlement sheet that would show  
 13 it?  
 14 Q. I may, but if you remember.  
 15 A. I don't recall specifically.  
 16 Q. Do you consider \$100,000 a significant  
 17 amount of money?  
 18 A. It depends on the context.  
 19 Q. It's true, is it not, that you settled your  
 20 lawsuit for \$385,000?  
 21 A. I believe that's what the amount was. If  
 22 you care to show it to me, I'd be happy to look at  
 23 it.  
 24 Q. That settlement was for all of the claimed



1 damages that you had brought in the litigation; isn't  
2 that correct?  
3 A. I don't recall specifically what the  
4 settlement sheet spoke to. My recollection of the  
5 settlement was that in exchange for a release, there  
6 would be an exchange of money payable. I don't recall  
7 any specific breakdown as far as what that settlement  
8 was.  
9 Q. Let me show you a document we'll mark as  
10 Vail deposition 31.  
11 (Whereupon exhibit Vail-31 was marked  
12 for identification.)  
13 BY MR. HALLER:  
14 Q. Do you have before you what we've marked as  
15 Vail deposition 31?  
16 A. Yes, I do.  
17 Q. Do you recognize this to be the general  
18 release that you signed?  
19 A. It appears to be.  
20 Q. This shows that you were to receive \$385,000  
21 paid by Allstate Insurance Company paid on behalf of  
22 Peter Gill. Do you see that?  
23 A. I see it.  
24 Q. If you look at the bottom of the page, do

1 A. That's what it says.  
2 Q. You would agree with me that that  
3 description would cover and did cover your claims for  
4 lost wages and benefits?  
5 A. No, I wouldn't agree with you.  
6 Q. Well, let me ask it differently, Mr. Vail.  
7 You had a claim, you agree, for lost wages and  
8 benefits in the lawsuit against Mr. Gill?  
9 A. That's correct.  
10 Q. And you did not reserve your right to pursue  
11 those claims in addition to the money for which you  
12 settled; did you?  
13 A. Pursue the claims against whom?  
14 Q. Let me try this again. It's very simple,  
15 but I assume that you're having difficulty with it.  
16 You made a claim, as part of your lawsuit, for lost  
17 wages and benefits; did you not?  
18 A. I did.  
19 Q. And you settled the entirety of your claim;  
20 right?  
21 A. That's my understanding.  
22 Q. As part of the settlement, you settled your  
23 claim for lost wages and benefits, as well as your  
24 claim for personal injuries; did you not?

1 you agree that this release that you signed covered  
2 any medical treatment and other benefits, including  
3 income loss benefits?  
4 A. That's what this says.  
5 Q. You agree, do you not, that your settlement  
6 covered both your personal injuries and any lost  
7 income that you may have received as a result of those  
8 injuries?  
9 A. That was not my understanding.  
10 Q. Do you agree that the settlement covered all  
11 of your claims for damages in the case?  
12 MR. THOMPSON: I object to the form.  
13 BY MR. HALLER:  
14 Q. You may answer.  
15 A. Could you repeat the question, please?  
16 Q. Do you agree that the settlement covered all  
17 your claims for damages in the lawsuit?  
18 A. That was not my understanding.  
19 Q. Well, looking at this document, and you can  
20 take a minute to read it --  
21 A. What this document says is that the  
22 releasors agree to indemnity releasees and their  
23 attorneys, and to hold releasees and their attorneys  
24 harmless, from any and all existing and potential

1 A. I settled the claim -- My understanding of  
2 the settlement --  
3 Q. Could you answer my question?  
4 A. Please, ask it again. I didn't understand  
5 it.  
6 Q. Your settlement covered all of your claims,  
7 including your claim for lost wages and benefits;  
8 didn't it?  
9 A. The settlement releases Mr. Gill from any  
10 future claims. I don't have that understanding that  
11 you're asking me to speak to.  
12 Q. There was nothing left over in terms of your  
13 claims after you reached a settlement that's referred  
14 to in the general release marked as Vail deposition  
15 31; was there?  
16 A. Nothing left over against whom?  
17 Q. Against Allstate Insurance Company or Peter  
18 Gill.  
19 A. With Peter Gill and Allstate, that  
20 settlement, to my understanding, settled all claims  
21 against them.  
22 Q. All claims. All I'm asking is: That  
23 settlement of all claims included your claims for lost  
24 wages and benefits resulting from your injury; didn't

1 subrogation liens in connection with any medical  
2 treatment and other benefits, including income loss  
3 benefits, rendered to Kenneth T. Vail due to any  
4 injuries sustained by Kenneth T. Vail from the subject  
5 incident. Nowhere in this document does it say that  
6 all wage income losses are included. If I'm  
7 misinterpreting something, please, help me to  
8 understand it.  
9 Q. I'm looking at the first paragraph, Mr.  
10 Vail. It says that basically you will be paid  
11 \$385,000 by Allstate Insurance. Do you agree with  
12 that?  
13 A. That's what it says.  
14 Q. And that in return for that, you would be  
15 releasing Allstate Insurance Company and Peter Gill  
16 for any and all courses of action involving personal  
17 injury. Would you agree with that?  
18 A. Yes, I would.  
19 Q. You would also agree, would you not, that  
20 that release covers all claims, demands, damages,  
21 costs, loss of services, expenses, compensation and  
22 all consequential damage on account of, or in any way  
23 growing out of, any personal injury that you  
24 sustained; right?

1 it?  
2 A. Against Gill and Allstate, yes.  
3 Q. That's all I'm asking. You agree with  
4 that?  
5 A. Against Gill and Allstate, absolutely.  
6 Q. You're not suggesting in this litigation,  
7 Mr. Vail, are you, that you're entitled to receive  
8 lost compensation from Allstate and Peter Gill for  
9 wages and benefits and also get that same lost wages  
10 and benefits from Harleysville; are you?  
11 A. Which litigation are you referring to?  
12 Q. Let me start again. You're not suggesting  
13 in this litigation; that is, the case you have against  
14 Harleysville, that you are entitled to receive lost  
15 income and benefits both from Allstate Insurance  
16 Company and from Harleysville for the same period of  
17 time; are you?  
18 A. I expect to be made whole. I don't believe  
19 I've been made whole from Harleysville. The general  
20 release that I signed in the context of the Gill  
21 litigation had absolutely nothing to do with any  
22 release with Harleysville, nor does this release speak  
23 to any apportionment of funds relating to lost wages.  
24 Therefore, I consider that I have a valid lost wage

Page 248

1 claim against Harleysville.  
 2 Q. Is it your testimony that there was no  
 3 apportionment of the wage loss in the litigation  
 4 against Mr. Gill?  
 5 A. I don't know what it may have been. I never  
 6 was presented with any numbers to show any breakdown.  
 7 Q. This release was signed on the 10th of  
 8 January, 2003; is that right?  
 9 A. That's what it says.  
 10 Q. And your testimony is you don't know the  
 11 exact apportionment of the \$385,000?  
 12 A. It's my understanding there was no  
 13 apportionment. It's my understanding that in the  
 14 context of this settlement, there was never any  
 15 discussion around any number attached to wage loss,  
 16 and I had no knowledge that signing such a release  
 17 would release Harleysville from anything.  
 18 Q. I think you're sort of assuming things about  
 19 my question that's probably not appropriate.  
 20 A. Please, try again.  
 21 Q. Okay. I thought you said in response to my  
 22 last-but-one question that you didn't know the details  
 23 of any apportionment. You didn't know how the  
 24 \$385,000 was apportioned; is that correct?

Page 249

1 A. Well, apportionment in the sense that I knew  
 2 that my attorney was going to take roughly 33 percent  
 3 plus expenses right off the top, so the 385,000 that's  
 4 mentioned in this general release never made it to  
 5 me. I never saw that money. It went to my attorney.  
 6 He deducted his fees and expenses. In my discussions  
 7 with attorneys prior to signing this general release,  
 8 there was no discussion that I can recall that  
 9 indicated that in any way future claims against  
 10 Harleysville would be barred by signing this release.  
 11 To the contrary, it was my understanding that any  
 12 action against Harleysville from an employment  
 13 liability standpoint for damages for lost wages would  
 14 continue.  
 15 Q. That having been said, all I'm asking is  
 16 that of the 385,000, you don't know how much of that,  
 17 if any, was allocated to the lost wage component of  
 18 your damage claim as opposed to the personal injury  
 19 component of your damage claim; do you?  
 20 A. I don't recall being presented with any  
 21 information that would show that.  
 22 Q. You don't know?  
 23 A. I would agree with that.  
 24 Q. You do agree in principle with the following

Page 250

1 proposition, which is that if, for example, \$100,000  
 2 of the 385 had been attributable to your lost wages  
 3 and benefits for the period after your injury that you  
 4 wouldn't be able to get from Harleysville that amount  
 5 of money, since you already were compensated for your  
 6 lost wages?  
 7 MR. THOMPSON: Object to the form.  
 8 You can answer.  
 9 THE WITNESS: That would be for a jury  
 10 to decide.  
 11 BY MR. HALLER:  
 12 Q. Do you think you can double dip? Do you  
 13 think you can get your lost wages and income from two  
 14 sources and double up on the losses?  
 15 MR. THOMPSON: Object to form.  
 16 BY MR. HALLER:  
 17 Q. You may answer.  
 18 A. In no way do I consider it double dipping.  
 19 I have no understanding that there was any double  
 20 dipping going on here.  
 21 Q. I realize, since you don't know, it is an  
 22 assumption, but assuming that a significant portion of  
 23 the \$385,000 was allocated to your claim for lost  
 24 wages and benefits, do you agree that it would not be

Page 251

1 fair or right for you then to recover for the same  
 2 period of time lost wages and benefits from  
 3 Harleysville?  
 4 A. I reject your assumption.  
 5 Q. You do? So you think that you can, in fact,  
 6 in this litigation double dip?  
 7 A. Let me answer the question again. I think I  
 8 was misunderstood. I reject your assumption that a  
 9 significant component was devoted to wage loss.  
 10 Q. That wasn't my question.  
 11 A. That's the assumption you asked me to make.  
 12 I'm objecting to your assumption.  
 13 Q. I understand. That's what your lawyers  
 14 object to. I'm asking you hypothetically if there was  
 15 that allegation that you would agree that it's not  
 16 fair or right for you to double dip. That's all.  
 17 MR. THOMPSON: Object to form.  
 18 THE WITNESS: I don't think there's any  
 19 double dipping going on here.  
 20 BY MR. HALLER:  
 21 Q. Mr. Vail, that isn't my question. Let me  
 22 try and ask it just in a different way, and then we'll  
 23 move on. Do you think that it's appropriate for you  
 24 to receive payment for lost wages and income for the

Page 252

1 same period of time from both Allstate Insurance on  
 2 behalf of Peter Gill and from Harleysville?  
 3 A. I think that's for a jury to decide.  
 4 Q. I'm asking you.  
 5 A. I've answered your question twice now.  
 6 Q. No. I'm asking you whether you think that  
 7 that's fair or right.  
 8 A. You're asking me to make an assumption based  
 9 on information I don't have regarding the information  
 10 in the settlement. I don't see any double dipping  
 11 going on here whatsoever.  
 12 Q. Let me come back, Mr. Vail, and then I'll  
 13 move on because I don't think I have an answer. I've  
 14 tried it many different ways. Assuming that some  
 15 portion of this money, let's say \$100,000, was  
 16 attributable to your claim for lost wages and  
 17 benefits, which we agree was part of your claim, do  
 18 you in this case consider it appropriate that you  
 19 receive lost wages and benefits from Harleysville for  
 20 the same period of time as covered by that \$100,000?  
 21 A. It may, in fact, be. It depends on the  
 22 facts and circumstances.  
 23 Q. What facts and circumstances are those?  
 24 A. It would depend on what the settlement

Page 253

1 delineated in terms of apportionment of how the  
 2 settlement was constructed.  
 3 Q. You don't know how it was constructed?  
 4 A. I don't have specific knowledge, no.  
 5 Q. Is there anyone you can think of that would  
 6 know?  
 7 A. The only one I could think of who would know  
 8 would be Jerry Knafo.  
 9 Q. He was your attorney?  
 10 A. He was my counsel.  
 11 Q. How about somebody representing Allstate;  
 12 might they know how it was attributed?  
 13 A. That would be conjecture.  
 14 Q. But we're clear in this deposition that you  
 15 don't know?  
 16 A. That's correct.  
 17 Q. And for all you know, the full amount,  
 18 385,000, may have been attributable to lost wages and  
 19 benefits?  
 20 A. Counsel explained to me that the settlement  
 21 was intended to cover my pain and suffering, medical  
 22 expenses and such things. There was never any  
 23 discussion that I can recall with my counsel regarding  
 24 wage loss.

Page 254

1 Q. There must have been because it was in your  
2 complaint; wasn't it?  
3 A. I'm sorry.  
4 Q. It was in your complaint?  
5 A. What was in my complaint?  
6 Q. Your wage loss.  
7 A. That was mentioned in my complaint.  
8 Q. It was a major component of your claim for  
9 damages?  
10 A. I disagree it was a major component.  
11 Q. Mr. Vail, other than Allstate's attorneys  
12 and your attorney, is there anyone else who might know  
13 how this was allocated?  
14 A. Not to my knowledge.  
15 Q. Does your wife have any specific knowledge?  
16 MR. THOMPSON: I object.  
17 BY MR. HALLER:  
18 Q. Does your wife have any specific knowledge  
19 about how this was allocated?  
20 A. Other than what was explained to Attorney  
21 Knafo, I don't have a specific recollection that she  
22 would.  
23 Q. Did you have any out-of-pocket medical  
24 expenses?

Page 255

1 A. Yes.  
2 Q. What were those?  
3 A. I don't recall.  
4 Q. How much were they?  
5 A. I don't recall.  
6 Q. Can you give me some general estimate as to  
7 how much in the nature of out-of-pocket medical  
8 expenses that you had?  
9 A. I really don't recall. If you want that  
10 information, I believe Attorney Knafo can probably  
11 provide it.  
12 Q. Was it less than \$10,000?  
13 MR. THOMPSON: I object. He said he  
14 didn't know.  
15 BY MR. HALLER:  
16 Q. Was it less than \$10,000?  
17 A. I don't recall.  
18 Q. Do you have the medical bills to support  
19 those claims?  
20 A. I believe Attorney Knafo has them. I don't  
21 have specific knowledge of that.  
22 Q. Let's go through it. Your in-hospital  
23 treatment was covered by insurance; wasn't it?  
24 A. I don't believe all of it was.

Page 256

1 Q. When you say Mr. Knafo has it, did you not  
2 keep a copy of the information you provided him?  
3 A. I may have. I don't have a specific  
4 recollection.  
5 Q. You may actually have that information?  
6 A. It's possible.  
7 Q. You can request it from Mr. Knafo; right?  
8 A. I believe so.  
9 MR. THOMPSON: Make a request, and I'll  
10 follow up in writing for any medical expenses that  
11 were incurred as a result of the injury.  
12 BY MR. HALLER:  
13 Q. You were treated at Hershey Medical Center;  
14 were you not, for your injury?  
15 A. I was.  
16 Q. Dr. Spence Reid was the primary physician  
17 responsible for your surgery; is that right?  
18 A. He was one of the surgeons who attended to  
19 me. He was not the only one.  
20 Q. Who else was responsible?  
21 A. I recall the surgeon Charles Davis, and I  
22 recall a chief surgical resident, whose name escapes  
23 me at the moment, but I'm sure it would be reflected  
24 in the medical records.

Page 257

1 Q. You would agree that Dr. Spence Reid's  
2 medical records and any other treating physician's  
3 medical records would reflect the nature of the  
4 surgery that was performed on you?  
5 A. It's supposed to.  
6 Q. Have you, at any point before this  
7 deposition, reviewed any of those medical records?  
8 A. No.  
9 Q. You were admitted on June 2nd, 2000 and  
10 discharged from the hospital on June 10th, 2000; is  
11 that correct?  
12 A. That's my recollection.  
13 Q. Then you received in-home physical therapy  
14 treatment from Lehigh Valley Home Care after your  
15 discharge from the hospital; did you not?  
16 A. I recall that was the case, yes.  
17 Q. Do you recall who the individuals were from  
18 Lehigh Valley Home Care who assisted you with your  
19 in-home physical therapy?  
20 A. My recollection was there were two  
21 therapists. The first was a Beth Predy, and the  
22 second, as I recall, was a Carey Hrichak.  
23 Q. How often did they come to work with you?  
24 A. I don't recall specifically.

Page 258

1 Q. Once a week, twice a week?  
2 A. I don't recall. It was four years ago. I  
3 don't recall specifically.  
4 Q. Do you recall that they would do assessments  
5 of your physical progress?  
6 A. I don't recall specifically what paperwork  
7 they completed.  
8 Q. Do you recall what you did with them when  
9 they were there?  
10 A. I remember that the initial therapist was  
11 working on very basic movement therapies, and the  
12 second therapist worked on those initial therapies and  
13 extended into a greater range of motion, as I recall.  
14 Q. Mr. Vail, I have in front of me a report  
15 written by Carey Hrichak from July 7th, which is just  
16 over a month from your injury. Do you recall her  
17 doing an evaluation on July 7th?  
18 A. Not specifically.  
19 Q. You're not suggesting she didn't? You just  
20 don't remember?  
21 A. I don't recall.  
22 Q. It's true, is it not, that by July 7th, 2000  
23 that you were able to groom yourself unaided?  
24 A. What's the definition of groom?

Page 259

1 Q. There isn't a definition. If you don't  
2 understand the question or the term, you can tell me.  
3 A. Would you, please, elaborate on what you  
4 mean by groom?  
5 Q. Brush your hair, brush your teeth, go to the  
6 bathroom.  
7 A. I can recall doing those things.  
8 Q. So you were able to groom yourself unaided  
9 at that point?  
10 A. If that's your definition of groom, I can do  
11 those things.  
12 Q. You were able to get your clothes out from  
13 the closets and drawers and put them on and off  
14 without assistance?  
15 A. I recall I was given, and I can't remember  
16 which therapist gave these items to me, it may have  
17 been at Hershey Medical Center, I was given a specific  
18 device to be able to reach things. It had an  
19 extension, and it had a red handle and a pincher on  
20 the end so I could reach things from closets that I  
21 wouldn't otherwise be able to reach because of the  
22 medical condition that I had, and I remember being  
23 given a special -- I don't recall specifically what it  
24 was called, but it's a long piece of metal, a device



Page 260

1 you would use to put your shoe on you, but it's not  
 2 your standard shoehorn that's just a few inches long.  
 3 This was two feet or more long that I could use to  
 4 apply a sock. In July, my recollection was that I was  
 5 still using those devices for dressing.  
 6 Q. Can you explain why she says that you were  
 7 able to get clothes out of closets and drawers and put  
 8 them on and remove them from the upper body without  
 9 assistance?  
 10 A. I think you'd have to ask her that  
 11 question.  
 12 Q. Were you able to, at that time, put your  
 13 clothes on and off without assistance?  
 14 A. I could dress myself, but the clothing I  
 15 chose to wear was easy to take on and off. I couldn't  
 16 dress myself with certain pieces of clothing that were  
 17 difficult to get on over my neck. I don't have a  
 18 specific recollection of the context in which that  
 19 comment might have been made.  
 20 Q. It's true, is it not, that by that time, you  
 21 were able to walk on even and uneven surfaces and  
 22 stairs with or without railings?  
 23 A. Not without crutches.  
 24 Q. With crutches, you were able to be that?

Page 261

1 A. The only way I could ambulate in July of  
 2 2000, if that's the period that you're referencing,  
 3 was with crutches.  
 4 Q. You were able to do light housecleaning  
 5 tasks, cook and other things that you needed to do in  
 6 the home, at that time?  
 7 A. Well, I could move about the kitchen, and I  
 8 had a chair that was on wheels, but in terms of what I  
 9 would consider normal for my pre-injury tasks around  
 10 the house, no, I couldn't do the same things. I could  
 11 make very basic things in the kitchen, but I had  
 12 difficulty reaching the microwave and the freezer. I  
 13 had to use crutches or roll on a chair on wheels to be  
 14 able to move about the kitchen.  
 15 Q. By the time you were able to come back to  
 16 work though, all of those things had improved, so that  
 17 you were able to go about the daily tasks of living;  
 18 isn't that true?  
 19 A. What things?  
 20 Q. The things that you had mentioned that you  
 21 had some limitations on as of July 7th.  
 22 A. When I returned to the office in  
 23 Harleysville, which was on or about August 21st, as I  
 24 recall, of 2000, I was on crutches, and my ambulation

Page 262

1 was still significantly impaired, so I don't  
 2 understand the context of the question.  
 3 Q. The things related to your daily life, which  
 4 is dressing, brushing your hair, brushing your teeth,  
 5 making meals, dressing, all those things you could do;  
 6 couldn't you?  
 7 A. I considered my daily routine severely  
 8 disrupted.  
 9 Q. You could do all of those things; couldn't  
 10 you? You could do all of those things that I just  
 11 mentioned; couldn't you?  
 12 A. I'm trying to answer your question, Mr.  
 13 Haller. There's no need to be --  
 14 Q. I'm getting very frustrated because we have  
 15 limited time. You could brush your teeth and brush  
 16 your hair, go to the toilet, get dressed, make meals  
 17 as of August 21st; couldn't you?  
 18 A. I could make meals, yes. I could brush my  
 19 teeth, yes. I could brush my hair, yes. I could  
 20 dress myself with the clothing that I picked out to  
 21 dress myself with, yes.  
 22 Q. Thank you.  
 23 A. I don't understand what all of those things  
 24 mean, Mr. Haller. If you want to be specific, I'll

Page 263

1 gladly answer them.  
 2 Q. You could watch TV?  
 3 A. I could watch TV.  
 4 Q. You could read a book?  
 5 A. Yes.  
 6 Q. You could get in a car and drive to work on  
 7 August 21st; couldn't you?  
 8 A. I could do that with great difficulty.  
 9 Q. But you could do it?  
 10 A. I did it, yes.  
 11 Q. You could go to work and concentrate on your  
 12 work; couldn't you?  
 13 A. I went to work, and I did my best.  
 14 Q. And you could concentrate; couldn't you?  
 15 You were mentally able to do the job at that point in  
 16 time; weren't you?  
 17 A. I could concentrate, yes.  
 18 Q. As of August 21st, the limitations that you  
 19 had were with respect to walking without an assistive  
 20 device, such as crutches or a cane?  
 21 A. That is one of the limitations I had. The  
 22 other limitations that I recall was that my surgeon  
 23 instructed me not to travel more than necessary and  
 24 not to lift objects if I didn't have to.

Page 264

1 Q. I think we established in the last  
 2 deposition that the limitation on lifting was not more  
 3 than 30 pounds. Do you recall that?  
 4 A. You asked me the question, and I answered.  
 5 Q. But do you recall that that was the  
 6 limitation, 30 pounds?  
 7 A. Are you done speaking? There's been a  
 8 pattern several times that I've tried to answer and  
 9 started, and you continue. Will you, please, repeat  
 10 the question?  
 11 Q. Do you recall that the limitation on lifting  
 12 was 30 pounds when you came back to work?  
 13 A. I remember that there was a note I received  
 14 from the doctor, and I recall, at the previous  
 15 deposition, there was the document that Dr. Reid had  
 16 supplied to Harleysville that I hadn't previously  
 17 seen, and there may have been a discrepancy on the two  
 18 numbers. I don't recall specifically.  
 19 Q. Since you don't, we'd have to look at the  
 20 document to see what the restriction was on lifting;  
 21 right?  
 22 A. I presume so.  
 23 Q. But you do agree, do you not, Mr. Vail, that  
 24 you were able to lift, but there was a limitation on

Page 265

1 lifting over a certain defined weight?  
 2 A. Yes, I remember that. From a practical  
 3 standpoint too, Mr. Haller, I could lift, but I was on  
 4 an assistive device. I didn't have both hands free.  
 5 Q. You were using a cane at that point?  
 6 A. I was using a crutch or a cane, depending on  
 7 what day we're talking about.  
 8 Q. You began outpatient physical therapy at  
 9 Muhlenberg Hospital Center in September of 2000; did  
 10 you not?  
 11 A. My therapy, as I recall, was at an  
 12 outpatient location, not in the hospital itself.  
 13 Q. Do you remember who you worked with at  
 14 Muhlenberg?  
 15 A. My recollection was the primary therapist  
 16 was Brian Boyle.  
 17 Q. You saw Brian Boyle regularly over the  
 18 course of the next several weeks; is that correct?  
 19 A. How would you define regularly?  
 20 Q. How would you define regularly, Mr. Vail?  
 21 A. If you were to ask me my opinion if you're  
 22 asking me regularly, I would say that would be, at  
 23 least, once a week, maybe two, perhaps three.  
 24 Q. Were you seeing him once a week?

Page 266

1 A. I don't recall specifically. I believe it  
2 was, at least, that for a period of time, but I don't  
3 recall specifically.  
4 Q. I have his notes in front of me, and it  
5 seems like you were going on a regular basis to see  
6 him. Would you agree with that?  
7 A. Yes.  
8 Q. Do you recall that the two of you set  
9 certain goals for what you were trying to achieve for  
10 short-term goals and long-term goals?  
11 A. I remember discussions around goals, but I  
12 don't recall what they were specifically.  
13 Q. Do you recall what the goals were?  
14 MR. THOMPSON: Objection; asked and  
15 answered.  
16 MR. HALLER: Maybe I didn't fully hear  
17 the answer.  
18 BY MR. HALLER:  
19 Q. Are you saying you don't remember what the  
20 goals were?  
21 A. Perhaps we can ask the court reporter to  
22 read back my answer.  
23 Q. I don't think we need to do that. I'm just  
24 asking you the question.

Page 267

1 A. I'm confused.  
2 MR. THOMPSON: He said he didn't know,  
3 and you asked the question again. That's why he said  
4 he didn't know again.  
5 BY MR. HALLER:  
6 Q. Let me go back so the record is clear. The  
7 question I asked you was: Do you recall that you and  
8 Mr. Boyle agreed to certain short-term and certain  
9 long-term goals?  
10 A. My answer to you is: I remember a  
11 discussion about goals, but I don't recall them  
12 specifically.  
13 Q. So we'd have to look at the medical records  
14 to see what those goals were?  
15 A. I'm sorry. Is that a question?  
16 Q. Yes.  
17 A. I presume so.  
18 Q. Understand, Mr. Vail, all I'm trying to do  
19 is, from the perspective of the defendant, find out  
20 information, and if you don't know it, I need to know  
21 where I can go and get it.  
22 So you're telling me under oath that you  
23 simply don't remember the goals that you set for  
24 yourself with Mr. Boyle; right?

Page 268

1 A. That's correct. I don't recall them  
2 specifically, as I stated.  
3 Q. So if they are set out in detail in his  
4 notes, you have no basis to contradict what's in his  
5 notes; do you?  
6 A. If you care to share them with me, it might  
7 refresh my memory.  
8 Q. I thought that's what you were going to  
9 say.  
10 Do you recall that he gave you a home  
11 exercise program?  
12 A. Yes, I do.  
13 Q. Did you regularly perform that home exercise  
14 program?  
15 A. Yes, I did.  
16 Q. Did you ever see any of his assessments of  
17 you?  
18 A. It's possible I may have seen them while he  
19 was completing the form behind the desk, but I don't  
20 recall him completing an assessment and showing it to  
21 me.  
22 Q. Do you recall him telling you, as of your  
23 first visit on September 18th, 2000, that you had  
24 excellent rehab potential to return to your prior

Page 269

1 functional level?  
2 A. Not specifically, no.  
3 Q. You don't recall a discussion about that?  
4 A. No, sorry.  
5 Q. You did have a general understanding when  
6 you began therapy that if you worked hard that you  
7 could return to your prior functional level?  
8 A. That was the dream at that point for me. I  
9 had no specific understanding that that would be  
10 achieved.  
11 Q. But you were, in fact, able to achieve it;  
12 weren't you?  
13 A. Retrospectively looking at the case, I think  
14 history would prove that to be, but at the time, I had  
15 no knowledge that that would occur.  
16 Q. He did not tell you that, even though it's  
17 in his notes?  
18 A. I don't have a recollection of him doing  
19 so.  
20 Q. Do you recall saying that what you would  
21 like to achieve was to be able to ride a mountain  
22 bike, run and play golf?  
23 A. I remember talking about those activities,  
24 yes.

Page 270

1 Q. When you were with Mr. Boyle, you would do a  
2 variety of exercises?  
3 A. There were different exercises. I don't  
4 know quite how you would characterize a variety.  
5 Q. What kind of things would you do with Mr.  
6 Boyle when you went to visit?  
7 A. They were range of motion exercises that  
8 that therapist, Boyle, had me undergoing that were  
9 very simple and basic at first, and then expanded in  
10 terms of building strength and expanded -- One of the  
11 goals, as I recall -- Some of this is coming back to  
12 me. One of the goals that he had and that I had was  
13 to be to, at some point, walk without a cane. When I  
14 walked in his door the first time, I could not walk  
15 without a cane. Over time, I do recall that he was  
16 able to assist me to achieving that goal for limited  
17 periods of time, but I still relied on the cane, and  
18 as I sit here now, I don't recall when the therapy  
19 sessions ended. If you have the records, I might be  
20 able to speak to it. Yes, I do recall discussions  
21 around it.  
22 Q. So one of your goals was to walk without a  
23 cane; right?  
24 A. As a goal?

Page 271

1 Q. Yes.  
2 A. If it could be achieved, yes.  
3 Q. You were able to walk with a cane, but your  
4 goal was to be able to walk without a cane; right?  
5 A. I had hoped to be able to achieve that, yes.  
6 Q. You did, in fact, achieve that during your  
7 therapy with Mr. Boyle; right?  
8 A. I don't recall specifically. Is that what  
9 the record says?  
10 Q. I'm asking you.  
11 A. I don't recall.  
12 Q. You may have, and you may not have? You  
13 don't recall?  
14 A. That's correct.  
15 Q. We'd have to look at the records to see  
16 exactly what you were able to do at a given point in  
17 time; right?  
18 A. That may jog my memory.  
19 Q. Do you recall that as of November 22nd that  
20 you told Mr. Boyle that you had been able to walk all  
21 over Manhattan the day before?  
22 A. No, I don't recall telling him that.  
23 Q. If his notes reflected that statement from  
24 you; you wouldn't disagree that that had occurred;

Page 272

1 would you?  
 2 A. It's possible that Mr. Boyle took a comment  
 3 out of context or wrote it down wrong. I'd just be  
 4 conjecturing, but at no time did I walk all over  
 5 Manhattan in -- In November?  
 6 Q. November.  
 7 A. I did not walk all over Manhattan in  
 8 November of 2000.  
 9 Q. Did you visit Manhattan in November of  
 10 2000?  
 11 A. I recall that I did.  
 12 Q. Did you walk in Manhattan?  
 13 A. Yes.  
 14 Q. And you walked without a cane; right?  
 15 A. I believe I did.  
 16 Q. Why did you go to Manhattan? Was it a visit  
 17 as a tourist?  
 18 A. My recollection is I was in Manhattan for a  
 19 job interview.  
 20 Q. Where did you walk in Manhattan?  
 21 A. I walked from the World Trade Center to an  
 22 address on Water Street.  
 23 Q. How did you get to the World Trade Center?  
 24 A. I took a bus from Lehigh Valley to

Page 273

1 Manhattan.  
 2 Q. It's true, is it not, that by October, 2000  
 3 that you were mountain biking, including biking off  
 4 the road?  
 5 A. What time period?  
 6 Q. By the end of October of 2000.  
 7 A. My recollection in October was that I was  
 8 riding a mountain bike on smooth dirt roads, but I  
 9 would not characterize it as mountain biking.  
 10 Q. How far were you able to ride your mountain  
 11 bike on a smooth dirt road?  
 12 A. My recollection was a very limited  
 13 distance.  
 14 Q. How far?  
 15 A. I don't recall specifically.  
 16 Q. Are you telling us you just don't recall how  
 17 far you had biked at that point in time?  
 18 A. Yes, that's what I'm telling you.  
 19 MR. THOMPSON: I believe we have about  
 20 15 minutes left.  
 21 MR. HALLER: We can play that game, but  
 22 I'm having a lot of difficulty with this witness  
 23 getting what I think are straightforward answers to my  
 24 questions.

Page 274

1 MR. THOMPSON: And I think he's  
 2 answering the questions. We can play the game if  
 3 you'd like to. I was told we have an hour. I'm not  
 4 going to go beyond that.  
 5 MR. HALLER: We'll continue to whatever  
 6 point, and we'll try and get the judge and see if we  
 7 can continue for the extra 15 minutes, or we'll come  
 8 back after we file a motion. I'm trying to get  
 9 through. One of the reasons we're doing this is  
 10 because we didn't have the records.  
 11 MR. THOMPSON: Okay.  
 12 MR. HALLER: Despite having requested  
 13 them several times prior to the last deposition.  
 14 BY MR. HALLER:  
 15 Q. It's true, is it not --  
 16 MR. THOMPSON: Do you want to confer  
 17 with me?  
 18 THE WITNESS: Yes.  
 19 (Break taken in the proceedings from  
 20 4:27 PM to 4:34 PM.)  
 21 BY MR. HALLER:  
 22 Q. Do you recall, on October 18th, telling Mr.  
 23 Boyle that you had noticed the day before for the  
 24 first time that you didn't need to even think about

Page 275

1 your walking?  
 2 A. I don't recall.  
 3 Q. You have no reason to test the accuracy of  
 4 that statement in his records; do you?  
 5 A. I don't know what he may have based that  
 6 on. I don't recall that.  
 7 Q. Other than what you told him, do you have  
 8 any knowledge of what you would base it on?  
 9 A. No, I don't.  
 10 Q. It's true, is it not, that as of early  
 11 November, you were doing a light jog on a treadmill?  
 12 A. I remember being on a treadmill being  
 13 supported by rails, and I remember a treadmill was  
 14 part of the progression therapy. I don't recall  
 15 specifically what date.  
 16 Q. Do you remember, in fact, that you began  
 17 jogging on a treadmill toward the end of October?  
 18 A. Not specifically, although if that's what  
 19 the medical record states, I have no reason to doubt  
 20 that I did so.  
 21 Q. Do you recall that as of the end of  
 22 September that you were already riding your bike on  
 23 the road and that you were riding a stationary bike  
 24 for, at least, 10 minutes?

Page 276

1 A. I recall riding a stationary bike in  
 2 therapy. I don't recall the time-frame.  
 3 Q. Do you recall that by the end of November  
 4 that you were running and sprinting?  
 5 A. I recall that originally, I couldn't take  
 6 more than three strides, at most, without significant  
 7 pain and having to stop. I do recall a progression  
 8 over some period of time, but I don't recall exactly  
 9 when that was.  
 10 Q. During the time that you were receiving  
 11 therapy from Mr. Boyle, do you recall, at some point,  
 12 running and sprinting within the context of that  
 13 therapy?  
 14 A. If we define sprinting as starting from zero  
 15 and progressing to some forward speed, I remember  
 16 doing that. I wouldn't call it sprinting in the sense  
 17 of a Carl Lewis or some professional athlete. I do  
 18 remember being able to take more than a few strides.  
 19 I do remember, at some point in the progression of the  
 20 therapy, being able to jog very slowly but awkwardly  
 21 around the parking lot outside the therapy office.  
 22 Q. You do recall doing that; right?  
 23 A. Yes, I do.  
 24 Q. Do you recall that you ran in excess of a

Page 277

1 quarter of a mile around the parking lot?  
 2 A. No, I don't have that recollection. I  
 3 remember running around the parking lot, but what  
 4 distance it was, I don't recall.  
 5 Q. If the notes reflected that it was a quarter  
 6 of a mile, you wouldn't disagree with that; would  
 7 you?  
 8 A. It would depend on how it was measured. I  
 9 don't know what the therapist based that on.  
 10 Q. Do you recall that by the last session with  
 11 Mr. Boyle that you were jogging approximately a  
 12 quarter of a mile?  
 13 A. Do I recall? No.  
 14 Q. Do you recall that, in fact, you performed  
 15 sprinting exercises with six repetitions over a  
 16 50-yard distance?  
 17 A. I don't recall that.  
 18 Q. You don't recall doing that?  
 19 A. I don't recall doing that.  
 20 Q. You're not saying you didn't? You just  
 21 don't remember?  
 22 A. I don't remember doing that.  
 23 Q. Are you saying you didn't do that?  
 24 A. No, I'm not.



Page 278

1 Q. His notes reflect that you were doing that.  
2 A. I recall there was a grassy area next to the  
3 parking lot that I was doing some type of  
4 back-and-forth exercise on. I don't recall  
5 specifically what the distance was.  
6 Q. Do you recall that by the end of your  
7 sessions that you had met both your short-term and  
8 long-term goals, whatever they specifically may have  
9 been?  
10 A. No.  
11 Q. You don't remember that?  
12 A. No, I don't.  
13 Q. You're not saying you didn't? You just  
14 don't remember?  
15 A. You asked me about my goals previously, and  
16 I had mentioned that they were a dream of mine to  
17 achieve it. I don't recall specifically achieving  
18 everything. If you want to go through them with me,  
19 I'll see if I can remember.  
20 Q. By the time you finished and were discharged  
21 from your therapy from Muhlenberg, you were able to  
22 jog for, at least, five minutes; right?  
23 A. If that's what it says. You're reading the  
24 document.

Page 279

1 Q. I'm asking you.  
2 A. I don't recall.  
3 Q. Mr. Vail, you're here, and it's your  
4 deposition. I'm asking what you recollect. That's  
5 all. Do you recollect that you were able to jog by  
6 the end of your sessions? Do you recollect that you  
7 were able to jog? If you don't recollect, just tell  
8 me.  
9 A. I told you several times. I just told you I  
10 don't recall.  
11 Q. Do you recall that you were able to sprint?  
12 A. I remember one of the exercises was going  
13 back and forth on the grassy field. I would not  
14 characterize that as a world-class sprint.  
15 Q. Do you recall that you could walk without a  
16 cane or a crutch?  
17 A. For brief periods, yes, I recall doing  
18 that.  
19 Q. For sustained periods.  
20 A. How do you define sustained? I don't have  
21 that recollection.  
22 Q. How about if I define sustained from the bus  
23 station in Manhattan to Water Street?  
24 A. I was able to do that.

Page 280

1 Q. You were able to do that?  
2 A. I was.  
3 Q. You were able to go mountain biking for more  
4 than one mile?  
5 A. I was able to ride a bicycle. I would not  
6 characterize it as mountain biking.  
7 Q. You were able to drive?  
8 A. At what period of time?  
9 Q. As of the time of your discharge from  
10 Muhlenberg, which was December of 2000.  
11 A. Yes, I was.  
12 Q. You were able to walk, at least, a mile  
13 without a cane?  
14 A. I don't recall that distance.  
15 Q. You were able to play golf?  
16 A. When was this?  
17 Q. All of these questions are as of the end of  
18 your therapy, which was in December of 2000.  
19 A. I don't recall ever playing golf during my  
20 therapy.  
21 Q. But you were able to. You would have been  
22 able to at that point in time; wouldn't you?  
23 A. I have no way of knowing. I didn't play.  
24 Q. You could walk far enough to get out of a

Page 281

1 car and hit a golf ball and get back in the car?  
2 A. I have no knowledge.  
3 Q. Have you played golf since December 6th of  
4 2000? In 2001, could you play golf?  
5 A. I'm sorry. What period of time?  
6 Q. In 2001, could you play golf?  
7 A. I remember playing golf at a benefit for my  
8 deceased sister-in-law where I rode in a golf cart and  
9 took a few swings with a golf club. That was in June  
10 of 2001, if I'm not mistaken, but I would not  
11 characterize it as a leisurely and enjoyable game of  
12 golf.  
13 Q. As of November of 2000, you were able to  
14 walk an unlimited amount; weren't you?  
15 A. I don't agree with that.  
16 Q. Do you have any explanation why your medical  
17 records from your treating physicians would say that  
18 you had a slight limp, but you were able to walk an  
19 unlimited amount as of November 11th, 2000?  
20 A. Who signed that?  
21 Q. These are the medical records provided by  
22 Dr. Spence and Charles Davis. Do you have any  
23 explanation for that, Mr. Vail?  
24 A. No. I suggest you ask them.

Page 282

1 Q. Is there any reason why you're trying to  
2 underestimate your degree of mobility as of the time  
3 you were doing this therapy?  
4 MR. THOMPSON: Object to the form.  
5 BY MR. HALLER:  
6 Q. Mr. Vail?  
7 A. I don't believe I am underestimating it.  
8 Q. Are you trying to suggest in this litigation  
9 that you were more than injured than you were, in  
10 fact, at the time?  
11 MR. THOMPSON: Object to the form.  
12 THE WITNESS: I'm telling you the  
13 truth.  
14 BY MR. HALLER:  
15 Q. So your doctors are saying you could walk an  
16 unlimited amount, and you're trying to tell us that  
17 you were more limited than that?  
18 A. You should ask the doctor that.  
19 Q. It's true, is it not, that other than the  
20 potential from episodic bursitis from having hardware  
21 in your leg that you made a full recovery from your  
22 gunshot wound?  
23 A. At what point in time is this?  
24 Q. Just answer my question, and we'll reference

Page 283

1 the time.  
2 A. I believe the answer to your question is  
3 contingent on what period.  
4 Q. I'm asking you whether, in fact, other than  
5 the potential for some episodic bursitis, you made a  
6 full recovery. Yes or no?  
7 A. I don't believe so.  
8 Q. What are you saying are the limitations that  
9 continue to exist?  
10 A. I have constant pain. I don't walk the  
11 same.  
12 Q. Are you biking?  
13 A. Not to the same degree I was before. I  
14 can't do what I did before.  
15 Q. We went through that the last time.  
16 A. I'm answering the question that I thought  
17 you asked me.  
18 Q. As of early September when you started your  
19 job search, I'd like to ask you some questions. You  
20 do recall that after you were terminated from  
21 Harleysville that you made efforts to find another  
22 job?  
23 A. I recall that I did.  
24 Q. In general terms, what kind of jobs did you

Page 284

1 identify?  
2 A. Initially, the search involved the insurance  
3 industry in a similar capacity in which the position I  
4 was terminated from.  
5 Q. Did you identify jobs that you thought you  
6 would be qualified for?  
7 A. I did.  
8 Q. And that you would be able to do?  
9 A. Yes.  
10 Q. And that you would be able to do from a  
11 physical perspective; that is, you'd be able to get to  
12 the work and do whatever you needed to do to do the  
13 job?  
14 A. I hoped to do that, yes.  
15 Q. I'm going to take a minute off the record.  
16 I guess we have five minutes left.  
17 (Break taken in the proceedings from  
18 4:46 PM to 4:52 PM.)  
19 BY MR. HALLER:  
20 Q. I have a discharge summary from Muhlenberg  
21 dated December 6th, 2000. Do you recall that that was  
22 the end of your therapy at Muhlenberg?  
23 A. Not specifically, but I believe that's about  
24 the time frame that it ended.

Page 285

1 Q. At that point, you stopped formal therapy  
2 from the hospital setting?  
3 A. I was given a discharge plan by the hospital  
4 center to continue certain home-based exercises.  
5 Q. What were the exercises that you were to  
6 continue doing?  
7 A. As I recall, and I don't have a specific  
8 recollection of it, but it involved using a theraband,  
9 which is an elastic strip which provides resistance to  
10 continue range of motion exercises with the lower  
11 extremities.  
12 Q. Did you have, at that point, your own  
13 exercise regime?  
14 A. I don't recall if I'd call it a regime, but  
15 I did some exercising in the home.  
16 Q. What exercising did you do?  
17 A. Using light weights with a bench. I would  
18 do upper body exercises for strength.  
19 Q. Did you do anything that was aerobic?  
20 A. I tried to run, but I found it uncomfortable  
21 and wound up continuing that. It was irritating my  
22 right hip area. I no longer do that.  
23 So I'm clear on your question, what time  
24 frame are you asking me about?

Page 286

1 Q. I was asking after your therapy ended.  
2 A. From Muhlenberg?  
3 Q. Yes.  
4 A. I remember trying to ride a bicycle, and I  
5 believe, at that point in time, I had a bicycle and a  
6 stationary trainer in by basement, and I would ride  
7 that for brief periods of time; brief defined as a few  
8 moments. I couldn't go on for too long, as I recall.  
9 I had a bar in my basement that was fixed to the  
10 rafters that I would hang from. That's what I can  
11 recall.  
12 Q. Then did you step up your exercise regime,  
13 or whatever you call it, after that point in time?  
14 A. I wouldn't call it a regime. It was fairly  
15 informal. I don't have a recollection. Do you have  
16 information?  
17 Q. I'm just trying to get an idea about your  
18 progression. You testified that you got back to  
19 hiking, maybe not as far as you did before, but those  
20 kind of things. What was the progression from your  
21 therapy?  
22 A. I don't recall a specific progression. I  
23 believe I testified in the last deposition that I did  
24 go on a hike. I may have done so twice.

Page 287

1 Occasionally, I rode a bicycle on the road. I  
2 attempted to ride off road and found that I couldn't  
3 perform to the same degree that I did before and  
4 thought it unsafe and didn't continue in that  
5 capacity. I don't know how to answer your question.  
6 Q. Today, do you do off-road biking?  
7 A. Do I ride a bicycle off road? On smooth  
8 surfaces, yes, I do. I don't take them on any of the  
9 trails where I used to go.  
10 Q. What other exercises do you currently do?  
11 A. Occasionally, upper body exercises with free  
12 weights. That's about it.  
13 Q. As of December of 2000 or when you finished  
14 your treatment and therapy at Muhlenberg Hospital, you  
15 were able to perform all of your daily life  
16 activities; were you not?  
17 A. In December of 2000, I had significant pain  
18 in my right hip, but I could move about the house much  
19 more easily than I could before, certainly before when  
20 I was terminated from Harleysville in September. I  
21 don't know that I would characterize it as resume all  
22 daily life activities to the same degree because one  
23 can fly a 747 for a minute before it crashes, and I  
24 wouldn't say that one can fly a plane, even though one

Page 288

1 can make the argument if you sit in the pilot's seat  
2 for a second, you're flying the plane before it  
3 crashes. To say I could do everything I could do  
4 before, I would not agree with that statement.  
5 Q. I don't think that was my question, Mr.  
6 Vail, with due respect. I'm really not asking you  
7 whether you could fly an airplane or whether you can  
8 sprint like Carl Lewis. I'm just asking you a very  
9 simple and, I think, an understandable question, which  
10 is that as of December 6th, 2000, you were able to go  
11 about and do everything that any normal person does in  
12 a day.  
13 A. I believe I could do most things. I don't  
14 recall that I could do everything the way I did it  
15 before, if that's what you're asking me. I could  
16 brush my teeth and comb my hair. I could make myself  
17 lunch in the kitchen.  
18 Q. You could do everything that you could do  
19 before the injury that you needed to do on a daily  
20 basis to live; couldn't you?  
21 A. I suppose, if you mean to live and exist,  
22 yes, I could. Could I do everything the way I did it  
23 before, no, I couldn't.  
24 Q. That's also true as of September of 2000?

Page 289

1 As of September of 2000 after you came back to work,  
2 you could do everything necessary to live on a daily  
3 basis; couldn't you?  
4 A. It depends on how one defines living on a  
5 daily basis. I could not do exactly what I could do  
6 before. I had to ambulate with an assistive device in  
7 September. September was not the same as later. The  
8 information that I had was I hoped that I would  
9 improve. It wasn't necessarily a guarantee.  
10 Q. As of that time, September of 2000 -- Let  
11 me ask you the other way around. Can you think of  
12 anything that you needed to do on a daily basis in  
13 order to just live; eating, brushing your teeth, going  
14 to work? Is there anything that you could think of  
15 that you couldn't do as of that point in time? I'm  
16 not asking whether it was difficult.  
17 A. I couldn't walk without assistance.  
18 Q. But you could walk with assistance?  
19 A. Yes, I could.  
20 Q. As of December of 2000 by the time your  
21 therapy had finished, you could walk without  
22 assistance; right?  
23 A. I was improved at that point, but I could  
24 not walk the same way I did for the same duration and